ELLIS LAWHORNE

John J. Pringle, Jr.
Direct dial: 803/343-1270
jpringle@ellislawhorne.com

June 22, 2004

VIA ELECTRONIC MAIL AND HAND-DELIVERY
The Honorable Bruce Duke
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, **Docket No. 2004-42-C, Our File No. 803-10208**

Dear Mr. Duke:

Enclosed are the original and twenty-five (25) copies of the **Testimony of the Joint Petitioners** for filing on behalf of the Joint Petitioners in the above-referenced Docket.

Please be advised that as a result of the merger between NewSouth and NuVox, the combined entity "NuVox" will be presenting one set of witnesses. With respect to Item 65/Issue 3-6, the combined entity will arbitrate the issue (adopting the NewSouth position and proposed language) along with KMC and Xspedius. In all other instances, the issues identified for arbitration by NewSouth and NuVox were identical and are adopted by the combined entity which will be called NuVox.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it with the bearer of these documents. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

With kind regards, I am

Very truly yours,

John J. Pringle, Jr.

JJP/cr
cc: all parties of record
Enclosures
G:\AP\SOFFICE\WPWIN\WP11\OC\SI\KMC-NewSouth-Nuvox-Xspedius\Duke Petition.wpd

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
Joint Petition for Arbitration of NewSouth Communications Corp. et al of an Interconnection Agreement With BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended	)	**Docket No. 2004-42-C**

TESTIMONY OF THE JOINT PETITIONERS

Marva Brown Johnson on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
Raymond Chad Pifer on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
Robert Collins on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
John Fury on behalf of NuVox Communications, Inc.
Jerry Willis on behalf of NuVox Communications, Inc.
Hamilton Russell on behalf of NuVox Communications, Inc.
James Falvey on behalf of Xspedius Companies

PRELIMINARY STATEMENTS

WITNESS INTRODUCTION AND BACKGROUND

KMC: Marva Brown Johnson

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Marva Brown Johnson. I am Senior Regulatory Counsel for KMC Telecom Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I manage the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and local rights-of-way issues. I am also an officer of the company and I currently serve in the capacity of Assistant Secretary.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Science in Business Administration (BSBA), with a concentration in Accounting, from Georgetown University; a Masters in Business Administration from Emory University's Goizuetta School of Business; and a Juris Doctor from Georgia State University. I am admitted to practice law in the State of Georgia.

I have been employed by KMC since September 2000. I joined KMC as the Director of ILEC Compliance; I was later promoted to Vice President, Senior Counsel and this is the position that I hold today.

Prior to joining KMC as the Director of ILEC Compliance, I had over eight years of telecommunications-related experience in various areas including consulting, accounting, and marketing. From 1990 through 1993, I worked as an auditor for Arthur Andersen & Company. My assignments at Arthur Andersen spanned a wide range of industries, including telecommunications. In 1994 through 1995, I was an internal auditor for BellSouth. In that capacity, I conducted both financial and operations audits. The purpose of those audits was to ensure compliance with regulatory laws as well as internal business objectives and policies. From 1995 through September 2000, I served in various capacities in MCI Communications' product development and marketing organizations, including as Product Development – Project Manager, Manager - Local Services Product Development, and Acting Executive Manager for Product Integration. At MCI, I assisted in establishing the company's local product offering for business customers, oversaw the development and implementation of billing software initiatives, and helped integrate various regulatory requirements into MCI's products, business processes, and systems.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony in proceedings before the following commissions: the North Carolina Utilities Commission; the Florida Public Service Commission; and the Tennessee Regulatory Authority.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am prepared to sponsor and adopt all testimony sponsored by my colleague Mr. Pifer. Mr. Pifer and I will be sharing the duty of serving as KMC's regulatory policy witness in all nine of the BellSouth arbitrations. Depending on the hearing schedule adopted by the Commission, I may appear at the hearing as a substitute for Mr. Pifer.[1]

General Terms and Conditions	G-1 through G-16
Attachment 2: Unbundled Network Elements	2-5, 2-7, 2-8, 2-9, 2-10, 2-12, 2-13, 2-15, 2-17, 2-18, 2-27, 2-28, 2-32, 2-33, 2-34, 2-38, 2-40
Attachment 3: Interconnection	3-2, 3-3, 3-4, 3-5, 3-6
Attachment 4: Collocation	4-2, 4-3
Attachment 6: Ordering	6-10
Attachment 7: Billing	7-1 through 7-12
Attachment 11: BFR/NBR	11-1

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

[1] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

KMC: Raymond Chad Pifer

Although Ms. Johnson sponsors this testimony on behalf of KMC, Mr. Pifer submits his profile in addition to Ms. Johnson's as he may appear as the live witness at the hearing

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name Raymond Chad Pifer. I am Regulatory Counsel to KMC Telecom Holdings, Inc., the parent company of KMC Telecom V, Inc. and KMC Telecom III, LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I assist in managing the company's federal regulatory and legislative matters, state regulatory proceedings and complaints, and interconnection issues. I am familiar with the operations and facilities of KMC.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Arts in History (BA) from Hendrix College, and a Juris Doctor from the University of Arkansas at Little Rock. I am admitted to practice law in the State of Georgia, as well as in the State of Arkansas.

I have been employed with KMC since October 2003. Prior to joining KMC as Regulatory Counsel, I had over seven years of telecommunications-related experience in various areas including carrier access billing, collections, industry relations, regulatory affairs, and interconnection services. From November 2000 to October 2003, I was Corporate Counsel — Regulatory Affairs for Xspedius Communications, LLC, where I handled the company's legal and regulatory matters in thirty-five (35) states, including compliance issues, rulemaking proceedings, and interconnection negotiations. Prior to

that, I was Southeast Regulatory Counsel to FairPoint Communications, Inc. from January to November 2000, and handled the regulatory and legal matters for the company's Southeast region as well as the company's own compliance matters. From 1996 to 2000, I served in a variety of positions with ALLTEL Communications, Inc., including the management of carrier access billing and collections, industry relations and interconnection services.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Public Service Commission of Wisconsin; the Louisiana Public Service Commission; the Michigan Public Service Commission; and the Alabama Public Service Commission.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[2]

General Terms and Conditions	G-1 through G-16
Attachment 2: Unbundled Network Elements	2-5, 2-7, 2-8, 2-9, 2-10, 2-12, 2-13, 2-15, 2-17, 2-18, 2-27, 2-28, 2-32, 2-33, 2-34, 2-38, 2-40
Attachment 3: Interconnection	3-2, 3-3, 3-4, 3-5, 3-6
Attachment 4: Collocation	4-2, 4-3
Attachment 6: Ordering	6-10
Attachment 7: Billing	7-1 through 7-12

[2] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

Attachment 11: BFR/NBR	11-1

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

KMC: Robert Collins

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Robert Collins. I am Director of Operations, Southern Region of KMC Telecom Holdings, Inc., the parent company of KMC Telecom V, Inc. and KMC Telecom III, LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. My primary responsibilities include directing KMC's network engineering center, overseeing technical evaluation of new equipment, engineering, and network design of KMC's basic and enhanced telecommunications networks. Moreover, I oversee the company's construction, installation, provisioning, and maintenance of KMC's end-user and wholesale products and services, as well as technical support for KMC's network.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Art degree in Psychology and Computer Science from Athens State College (now Athens University) in Athens, Alabama. I have been working in the communications field for 22 years and began with KMC in August of 1997 in the capacity of Operations Supervisor. In this role, I successfully turned up the first operational switch for KMC and was later promoted to my current position of Director of Operations.

Prior to joining KMC, I supported NASA's PSCN contract from August of 1987 until joining KMC in August of 1997. My role there was a Senior Network Analyst for Boeing

and later INET. My responsibilities included network management security of all voice and data communications throughout all NASA facilities in the continental United States and abroad**.** From 1981 until 1987 I worked with other communications companies to include GTE, GTECC, Communications Contractors, Inc. (CCI), and served four years in the United States Army as a 32F2IN3 (Crypto repair/installer) assigned to an Engineering and Installation group installing complete systems from the ground up.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. This is the first set of testimony that I have sponsored before a state commission.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[3]

General Terms and Conditions	None
Attachment 2: Unbundled Network Elements	2-4(B), 2-19, 2-20, 2-23(C), 2-25, 2-37, 2-39
Attachment 3: Interconnection	None
Attachment 4: Collocation	4-1, 4-4, 4-6, 4-7, 4-8, 4-9
Attachment 6: Ordering	6-1, 6-2, 6-3(B), 6-4, 6-5, 6-6, 6-7, 6-8, 6-9, 6-11
Attachment 7: Billing	None
Attachment 11: BFR/NBR	None

[3] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

NuVox: John Fury

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is John Fury. I am employed by NuVox. as Carrier Relations Manager. My business address is 2 North Main Street, Greenville, SC 29601.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. I am responsible for overseeing NuVox's business relationships with other telecommunications carriers particularly those incumbent local exchange companies with whom we interconnect to provide services.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I graduated from Louisiana State University in 1991 with a Bachelor of Science degree in Political Science, and I have been employed in the telecommunications industry since then. I have been employed in various capacities for Worldcom, Brooks Fiber, Broadwing and U.S. One. Since April 1998, I have been employed by NuVox (formerly NewSouth) Communications of Greenville, South Carolina. I have worked in network audit, planning and provisioning, capacity management, traffic management, outside plant design and engineering as well as network design. More specifically, since April 1998, I have worked for NuVox in network planning and capacity planning, and since January of 2001 I have held my current position as carrier relations manager.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Florida Public Service Commission; the Georgia Public Service Commission; the Louisiana Public Service

Commission; the Public Service Commission of South Carolina; and the Tennessee Regulatory Authority.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[4]

General Terms and Conditions	G-3
Attachment 2: Unbundled Network Elements	2-19, 2-20
Attachment 3: Interconnection	3-2, 3-6
Attachment 4: Collocation	4-4, 4-6, 4-7, 4-8, 4-9
Attachment 6: Ordering	6-4, 6-8
Attachment 7: Billing	None
Attachment 11: BFR/NBR	None

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

[4] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

NuVox: Jerry Willis

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Jerry Willis. I was formerly the Senior Director — Network Development for NuVox, from May 2000 until September 2003. Since September 2003 I have been retained as a consultant to NuVox.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. While at NuVox I assisted in matters such as implementation of switches, collocations, engineering, power and other elements needed to build the company's telecommunications network. While I served as Senior Director, I directed company and vendor employees in equipment installation and testing of sixty-one collocations, completing all sites in three months for an average of one site completion per day.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I have over thirty-five (35) years of experience in the telecommunications business and have worked with Competitive Local Exchange Carriers ("CLECs"), Incumbent Local Exchange Carriers ("ILECs"), Interexchange Carriers ("IXCs") and consulting firms.

I have held positions at several telecommunications companies. From 1997 to November of 1998 I was Director, Network Services for IXC Communications, an interexchange carrier located in Austin, Texas. From 1996 to January of 1997 I was the Director of Provisioning for McLeod USA. Prior to that I served as Director of International Business Development with Corporate Telemanagement Group, Inc. ("CTG") and was responsible for identifying and developing new business opportunities as well as recruiting and managing in-country agents. From October of 1986 until January of 1991,

I was employed with Telecom USA as Network Director. 1970 until 1986 I was employed by Contel, an ILEC headquartered in St. Louis, MO. While with Contel I served in various capacities, including stints as Special Services Technician, Division Transmission Engineer, District Superintendent, Division Planning Engineer and Manager, Proposal and Contract Development. From 1965-1970 I was an engineer in the Bell system.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to and appeared before the Public Service Commission of South Carolina, in most recent BellSouth Unbundled Network Element ("UNE") and interconnection pricing case (Docket No. 2001-65-C), and in the BellSouth "Section 271" case (Docket No. 2001-209-C).

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[5]

General Terms and Conditions	None
Attachment 2: Unbundled Network Elements	2-4(B), 2-5(C), 2-7, 2-17, 2-23(C), 2-37, 2-38, 2-39, 2-40
Attachment 3: Interconnection	3-3
Attachment 4: Collocation	4-1, 4-3
Attachment 6: Ordering	6-2, 6-5, 6-6, 6-7, 6-9

[5] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

Attachment 7: Billing	None
Attachment 11: BFR/NBR	None

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

NuVox: Hamilton ("Bo") Russell

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Hamilton E. Russell, III. I am employed by NuVox as Vice President, Regulatory and Legal Affairs. My business address is 301 North Main Street, Suite 5000, Greenville, SC 29601.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. I am responsible for legal and regulatory issues related to or arising from NuVox's purchase of interconnection, network elements, collocation and other services from BellSouth. In addition, I was primarily responsible for negotiation of the NuVox-BellSouth Interconnection Agreement presently in effect.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I received a B.A. degree in European History from Washington and Lee University in 1992 and a J.D. degree from the University of South Carolina School of Law in 1995. I have been employed by NuVox and its predecessors since February of 1998. From July of 1995 until January of 1998 I was an associate with Haynsworth Marion McKay & Guerard, LLP. From August of 1993 until July of 1995 I worked for the Office of the Speaker of the South Carolina House of Representatives.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Public Service Commission of South Carolina; the Georgia Public Service Commission; and the North Carolina Utilities Commission.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[6]

General Terms and Conditions	G-1, G-2, G-4, G-5, G-6, G-7, G-8, G-9, G-12, G-13, G-14, G-15, G-16
Attachment 2: Unbundled Network Elements	2-5(A-B), 2-8, 2-9, 2-10, 2-12, 2-13, 2-15, 2-18, 2-25, 2-27, 2-28, 2-32, 2-33, 2-34
Attachment 3: Interconnection	3-4, 3-5
Attachment 4: Collocation	4-2
Attachment 6: Ordering	6-1, 6-3(B), 6-10, 6-11
Attachment 7: Billing	7-1 through 7-12
Attachment 11: BFR/NBR	11-1

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

[6] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

Xspedius: James Falvey

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs for Xspedius Communications, LLC. My business address is 7125 Columbia Gateway Drive, Suite 200, Columbia, Maryland 21046.

Q. PLEASE DESCRIBE YOUR POSITION AT XSPEDIUS.

A. I manage all matters that affect Xspedius before federal, state, and local regulatory agencies. I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and local rights-of-way issues.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I am a cum laude graduate of Cornell University, and received my law degree from the University of Virginia School of Law. I am admitted to practice law in the District of Columbia and Virginia.

After graduating from law school, I worked as a legislative assistant for Senator Harry M. Reid of Nevada, and then practiced antitrust litigation in the Washington D.C. office of Johnson & Gibbs. Thereafter, I practiced law with the Washington, D.C. law firm of Swidler & Berlin, where I represented competitive local exchange providers and other competitive providers in state and federal proceedings. In May 1996, I joined e.spire Communications, Inc. as Vice President of Regulatory Affairs, where I was promoted to Senior Vice President of Regulatory Affairs in March 2000.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. In total, I have testified before 13 public service commissions, including those of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, New Mexico, Texas, Pennsylvania, Arkansas, and Kansas.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[7]

General Terms and Conditions	G-1 through G-16
Attachment 2: Unbundled Network Elements	2-1 through 2-40
Attachment 3: Interconnection	3-2, 3-3, 3-4, 3-5, 3-6, 3-8, 3-14
Attachment 4: Collocation	4-1 through 4-9
Attachment 6: Ordering	6-1 through 6-11
Attachment 7: Billing	7-1 through 7-12
Attachment 11: BFR/NBR	11-1

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

[7] The following issues have been settled: G-10, G-11, 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (A, B, D and E), 2-24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-13, 4-5, 4-10 and 6-3(a).

GENERAL TERMS AND CONDITIONS

Item No. 1, Issue No. G-1 [Section 1.6]: What should be the effective date of future rate impacting amendments?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-1.

A. Future amendments incorporating Commission-approved rates should be effective as of the effective date of the Commission order, if an amendment is requested within 30 calendar days of that date. Otherwise, such amendments should be effective 10 calendar days after request. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Rate amendments should essentially be self-executing and carriers are entitled to avail themselves of the rates approved by the Commission once the Commission approves them. The Petitioners have proposed language which is designed to reasonably address concerns regarding instability that could result from true up periods that cover a long period of time. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission's decision is unfavorable to it. BellSouth's language provides it with the opportunity to perform or possibly, delay performance of the last act necessary to effectuate a rate amendment.

Adopting the BellSouth proposal would allow BellSouth inordinate power to promulgate rate amendments that contain language that has little or nothing to do with implementing the Commission's rate decisions. Petitioners submit that rate amendments that result from Commission rate orders should be simple and straight-forward. There is no reason that either Party should be permitted to needlessly complicate a rate amendment with extraneous terms wholly unrelated to the implementation of the new rates. But BellSouth's proposed language, which provides no limit on the maximum amount of time following adoption of a new rate by the Commission for BellSouth to review and sign an amendment, injects a considerable amount of uncertainty into a process that should be simple and straightforward. The Commission should reject BellSouth's proposal and adopt Joint Petitioners' proposed language which ensures that future Commission approved rates are made effective in an efficient and expeditious manner. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-2.

A. The term "End User" should be defined as "the customer of a Party". *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The definition proposed by the Petitioners is simple and avoids controversy. In addition, it is the most natural and intuitive definition. Petitioners have a variety of telecommunications services customers – whether or not they qualify as the "ultimate user" of such telecommunications services (whatever that means) is simply not relevant

to whether they are or aren't "end users" of the telecommunications services provided by Petitioners. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed definition unnecessarily invites ambiguity and the potential for future controversy, by turning on the notion that in order to be an End User, the customer must be the "ultimate user of the Telecommunications Service". Obviously, this is a restrictive definition designed to serve some ulterior BellSouth motive. Given that the concept of "ultimate user" is undefined and there is no precise way of knowing which Telecommunications Service is "the Telecommunications Service" BellSouth refers to, BellSouth's proposal seems well suited to serve its apparent effort to have the term End User narrowly defined. However, there is no apparent policy or legal basis to support BellSouth's apparent attempt to limit who can or cannot be Petitioners' customers. Provided that Petitioners comply with the contractual provisions regarding resale, UNEs and Other Services (defined in Attachment 2), the contract should in no way attempt to limit who can or cannot be considered an End User of a party's services. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. ARE THERE OTHER REASONS WHY THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Yes. The curiously restrictive definition proposed by BellSouth is inconsistent with the manner in which the term "End User" has been used elsewhere in the Agreement. For example, under BellSouth's proposed definition of "End User," it is arguable that certain

types of CLEC customers, such as Internet Service Providers ("ISPs"), might not be considered to be "End Users". However, in Attachment 3 of the Agreement BellSouth has agreed to language regarding "ISP-bound traffic" that does treat ISPs as End Users, even under BellSouth's proposed definition. This language already has been agreed to. Yet it is clear that, while ISPs use Telecommunications Services provided by Petitioners and have been considered by the industry to be end users for more than 20 years, it is not readily apparent that they qualify as "the ultimate user of the Telecommunications Service. There simply is no need for the tension that exists between this provision and the improperly restrictive and ambiguous definition of End User proposed by BellSouth in the General Terms. The bottom line is that the language proposed by the Petitioners is simple, straightforward, and is the best way to avoid unnecessary ambiguity and future controversy. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. ARE THERE OTHER APPARENT COMPLICATIONS RAISED BY BELLSOUTH'S PROPOSED DEFINITION?

A. Yes. In connection with Attachment 2, Section 5.2.5.2.1, which addresses Enhanced Extended Loop ("EEL") eligibility criteria, BellSouth, is attempting to replace the word used in the FCC's rules: "customer" with "End User," a word which BellSouth seeks to limit to a vague subset of customers. If BellSouth wants to do that, its definition of End User should simply be that it means "customer". Petitioners will not agree to a definition that will serve to limit their rights and BellSouth's obligations to provide access to EELs, UNEs or any other services or facilities. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS ISSUE G-2 APPROPRIATE FOR ARBITRATION?

A. BellSouth's Issues Matrix states that Issue G-2 "is not appropriate for arbitration" because "the issue as stated by the CLECs and raised in the General Terms and Conditions of the Agreement has never been discussed by the Parties". BellSouth's Position statement appears to have been drafted by somebody that had not taken part in the negotiations. In any event, it is wrong. The Parties discussed the definition of End User in a number of contexts of the Agreement, including the Triennial Review Order ("TRO")-related provisions of Attachment 2. When Petitioners learned that BellSouth was going to attempt to use the definition of End User in conjunction with definitions from the TRO, to limit its obligation to provide, and CLECs' access to, UNEs and Combinations, they refused to agree to the definition of End User proposed by BellSouth in the General Terms and Conditions. The fact that the issue is teed up in the conflicting versions of the definition contained in the General Terms and Conditions document (a document controlled by BellSouth) belies BellSouth's false claim that the issue had never been discussed by the Parties. Petitioners have sought to clarify, via arbitration, the correct definition of End User so that it may be used consistently throughout the Agreement. For these reasons, Issue G-2 is properly before this Commission**.**

*[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 3, Issue No. G-3 [Section 10.2]: Should the agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible CLEC revenue in addition to specific provisions set forth in Attachments 3 and 7?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-3.

A. The answer to the question posed in the issue statement is "YES". BellSouth should be financially liable for causing, failing to prevent, or contributing to unbillable or uncollectible CLEC revenue. A general provision complements the specific provisions contained in Attachments 3 and 7. *[Sponsored by **3 CLECs:** M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The provision the Petitioners propose is standard language that has regularly been included in BellSouth's interconnection agreements, and in fact is contained in each of the Petitioners existing agreements with BellSouth (See NewSouth agreement Section 8.1; the KMC, NuVox and Xspedius agreements with BellSouth each contain the provision in Section 9.1) Accordingly, it is surprising for BellSouth to now be heard to complain that this provision is somehow unnecessary. *[Sponsored by **3 CLECs:** M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Even though Attachments 3 and 7 address areas of responsibility for various billing record exchange deficiencies, the provision proposed by the Petitioners is necessary to address instances not contemplated by the specific circumstances addressed in Attachments 3 and 7. The general provision proposed by the Petitioners should be, as it has always been, included as a "catch all" to address those instances not specifically contemplated elsewhere in the Agreement. *[Sponsored by **3 CLECs:** M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. CAN YOU CONCEIVE OF CIRCUMSTANCES THAT MIGHT NOT BE COVERED BY THE SPECIFIC PROVISIONS OF ATTACHMENTS 3 AND 7?

A. Yes. Certain traffic passed to NewSouth (now part of NuVox) by BellSouth over our Supergroups with a "0 CIC" would likely result in unbillable and uncollectible revenues. *[Sponsored by **1 CLEC:** J. Fury (NVX)]*

Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-4.

A. In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day immediately preceding the date of assertion or filing of the applicable claim or suit. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners and BellSouth should establish and fix a reasonable limitation on their respective risk exposure, in cases other than gross negligence or willful misconduct. As this Agreement is an arm's-length contract between commercially-sophisticated Parties, providing for reciprocal performance obligations and the pecuniary benefits as to each such Party, the Parties should, in accordance with established commercial practices, contractually agree upon and fix a reasonable and appropriate, relative to the particular

substantive scope of the contractual arrangements at issue here, maximum liability exposure to which each Party would potentially be subject in its performance under the Agreement. The Petitioners, as operating businesses party to a substantial negotiated contractual undertaking, should not be forced to accept and adhere to BellSouth's "standard" limitation of liability provisions, simply because BellSouth has traditionally been successful to date in leveraging its monopoly legacy to dictate terms and impose such provisions on its diffuse customer base of millions of end users requiring BellSouth service. Petitioners' proposal represents a compromise position between limitation of liability provisions typically found in the absence of overwhelming market dominance by one party, in commercial contracts between sophisticated parties and the effective elimination of liability provision proposed by BellSouth. As any commercial undertaking carries some degree of a risk of liability or exposure for the performing party, such risks (along with the contractual, financial and/or insurance protections and other risk-management strategies routinely found in business deals to manage these issues) are a natural and legitimate cost of doing business, regardless of the nature of the services performed or the prices charged for them. As Petitioners are merely requesting that BellSouth accept some measure, albeit a modest one relative to universally-regarded commercial practices, of accountability and contractual responsibility for performance and do not seek to expose BellSouth to any particular risks or excess levels of risk that would not otherwise fall within the general commercial-liability coverage afforded by any typical insurance policy, the incremental cost or exposure for these ordinary-course, insurable risks is nonexistent or minimal to BellSouth beyond possible costs incurred for the insurance premiums, financial reserves and/or other risk-management measures

already maintained by BellSouth in the usual conduct of its business, costs that would in any event likely constitute joint and common costs already factored into BellSouth's UNE rates.

Petitioners' proposal is structured on a "rolling" basis, such that no Party will incur liabilities that in aggregate amount exceed a contractually-fixed percentage of the actual revenue amounts that such Party will have collected under the Agreement up to the date of the particular claim or suit. Thus, for example, an event that occurs in Month 12 of the term of the Agreement would, in the worst case, result in a maximum liability equal to 7.5% of the revenue collected by the liable Party during those first 12 months of the term. This amount is fair and reasonable, and in fact, is far less onerous than the standard liability-cap formulations – starting from a minimum (in some of the more conservative commercial contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract — more universally appearing in commercial contracts. The Petitioners' proposed risk-vs.-revenue trade-off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth maintains that an industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services

or functions not performed, or not properly performed. This position is flawed because it grants Petitioners no more than what long-established principles of general contract law and equitable doctrines already command: the right to a refund or recovery of, and/or the discharge of any further obligations with respect to, amounts paid or payable for services not properly performed. Such a provision would not begin to make Petitioners whole for losses they incur from a failure of BellSouth systems or personnel to perform as required to meet the obligations set forth in the Agreement in accordance with the terms and subject to the limitations and conditions as agreed therein. In my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for nonperformance or improper performance by the other party. Therefore, BellSouth's proposal offers nothing beyond rights the injured Party would otherwise already have as a fundamental matter of contract law, thereby resulting in an illusory recovery right that, in real terms, is nothing more than an elimination of, and a full and absolute exculpation from, any and all liability to the injured Party for any form of direct damages resulting from contractual nonperformance or misperformance. Additionally, it is not commercially reasonable in the telecommunications industry, in which a breach in the performance of services results in losses that are greater than their wholesale cost — these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach. Petitioner's proposal for a 7.5% rolling liability cap is therefore more appropriate as a reasonable and

commercially-viable compromise and should be adopted. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 5, Issue No. G-5 [Section 10.4.2]: To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not limited?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-5.

A. The answer to the question posed in the issue statement is "NO". Petitioners cannot limit BellSouth's liability in contractual arrangements wherein BellSouth is not a party. Moreover, Petitioners will not indemnify BellSouth in any suit based on BellSouth's failure to perform its obligations under this contract or to abide by applicable law. Finally, BellSouth should not be able to dictate the terms of service between Petitioners and their customers by, among other things, holding Petitioners liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's End User tariffs and/or contracts. To the extent that a CLEC does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable in the particular circumstances, that CLEC should not be required to indemnify and reimburse BellSouth for that portion of the loss that would have been limited (as to the CLEC but not as to non-contracting parties such as BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability terms that BellSouth was successful in including in its tariffs at the time of such loss. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. First, the language in CLEC tariffs or other customer contracts cannot protect a non-party to those contracts, such as BellSouth, from suits by or potential liability to customers who experience damages as a result of BellSouth's breach of the Agreement or failure to abide by applicable law. Second, it is not reasonable to impose on Petitioners the burden of guaranteeing that their customers will accede to liability language identical to what BellSouth generally obtains. Petitioners do not have the market dominance or negotiating power of BellSouth, and thus do not have nearly the same leverage as BellSouth to dictate terms vis-à-vis their customers. As such, holding Petitioners to a standard that, in actual effect, assumes comparable negotiating positions for Petitioners and BellSouth in their respective markets is inappropriate, since it is clearly in each Party's own business interest, first and foremost, to at all times seek and secure in each particular aspect of its business operations the most favorable limitations on liability that it possibly can obtain. For these reasons, Petitioners propose that they be required to do no more than negotiate liability language that actually reflects the terms that they could reasonably be expected to secure in their exercise of diligence and commercially reasonable efforts to maintain effective contractual protections for their own direct liability interests that are most critical to their respective businesses. As such, Petitioners request that the Agreement allow them to offer a measure of commercially reasonable terms on liability that they may need in the exercise of their reasonable business judgment to make available to customers in order to conduct their businesses. Accordingly, these terms may at some point need to make allowances, although Petitioners would naturally prefer not to do so if they were in a position to deny such

terms, for some level of recovery for service failures. While each Party under the Agreement surely has a significant liability interest in ensuring that the other Party maintains an aggressive approach to tariff-based limitation of liability, such concerns are already adequately and more appropriately addressed by existing provisions of the Agreement and applicable commercial law stipulating that a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement. In other words, any failure by Petitioners to adhere to these existing standards of due care, commercial reasonableness and mitigation in their tariffing and contracting efforts would, in itself, bar recovery for any otherwise-avoidable losses. In order to allay any concern BellSouth may continue to have notwithstanding the above, Petitioners would agree to include terms that more expressly require each Party to mitigate any damages vis-à-vis third parties, for example a promise to operate prudently and perform routine system maintenance. These terms should make abundantly clear that, even without a rigid tariff-based standard, adequate protection will exist for BellSouth with respect to claims by a third-party customer of a Petitioner. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language that would require Petitioners to ensure that their tariffs and contracts include the same limitation of liability terms that BellSouth achieves in its own agreements. This language is unreasonable, anti-competitive and anti-consumer. As mentioned previously, Petitioners should not be required to offer the same tariff liability

terms and conditions as BellSouth. Moreover, it is likely that CLECs in certain instances would not even be able to obtain the same liability provisions from a customer due to the fact that a CLEC generally has to concede, where it can do so prudently in weighing its business-generation needs against the corresponding liability concerns, on certain terms to attract customers in markets dominated by incumbent providers. Given the vast disparity between BellSouth and the Petitioners in overall bargaining power and their relative leverage in the communications market it is patently unfair for BellSouth to attempt to dictate tariff terms that would limit the Petitioners' recourse and subject it to indemnity obligations by holding it to tariff terms that, in certain instances, may be uniquely obtainable by BellSouth. Such a provision is clearly a one-sided provision for the benefit of BellSouth and should not be adopted. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 6, Issue No. G-6 [Section 10.4.4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-6.

A. The answer to the question posed in the issue statement is "YES". Such an express statement is needed because the limitation of liability terms in the Agreement should in no way be read so as to preclude damages that CLECs' customers incur as a foreseeable result BellSouth's performance of its obligations under the Agreement, including its provisioning of UNEs and other services. Damages to customers that result directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or a CLEC's)

performance of obligations set forth in the Agreement that were not otherwise caused by, or are the result of, a CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and compensable under the Agreement for simple negligence or nonperformance purposes. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In any contract, including the Agreement, each Party should be liable for damages that are the direct and foreseeable result of its actions. Where the injured person is a customer of one Party, providing relief is no less proper where, as in the case of the Agreement, a contract expressly contemplates that services provided are being directed to such customers. Such liability is an appropriate risk to be borne by any service provider in a contract such as the Agreement that clearly envisions that the effect of performance or nonperformance of such services will be passed through to ascertainable third parties related to the other Party to the contract. In this Agreement, being a contract for wholesale services, liability to injured End Users must be contemplated and covered by express language, subject, in any event, to the forseeability and legal and proximate cause limitation as Petitioners have proposed for express inclusion in the Agreement in this particular instance as well as in addition to those found in the Agreement's general liability provisions. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position on liability vis-à-vis End Users is inadequate because it seeks to insulate itself from damages to End Users in all cases other than gross negligence or willful misconduct. However, End Users can be damaged simply as a result of BellSouth's negligence in performing under the Agreement or in complying with Applicable Law. Petitioners are unwilling to stipulate that BellSouth will not be responsible for its own failure to perform or abide by the law. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 7, Issue No. G-7 [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-7.

A. The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent reasonably arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Party receiving services under this Agreement is, at a minimum, equally entitled to indemnification as the Party providing services. As is more universally the case in

virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each. In other words, the higher level of risks inherent in service-related activities as compared to the mere payment and similar obligations of the receiving party typically results in a far heavier indemnity undertaking on the provider side. As such, the Party receiving services under this Agreement should, at a minimum, be indemnified for reasonable and proximate losses to the extent it becomes liable due to the other Party's negligence, gross negligence and/or willful misconduct, or failure to abide by Applicable Law. With regard to Applicable Law, the Parties agree in Section 32.1 of the General Terms and Conditions that "[e]ach Party shall comply at its own expense with all applicable federal, state, and local statutes, laws, rules, regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to its obligations under this Agreement ('Applicable Law')". With this provision expressly set forth in the General Terms and Conditions, it is logical that, a Party should be indemnified to a third-party due to the other Party's failure to comply with Applicable law, regardless of whether that Party is the providing or receiving Party. The Parties are in an equal contractual position under the Agreement to ensure compliance with Applicable Law as well as the terms and conditions of the Agreement and are, in any event, entitled to the benefit of Agreement provisions limiting any resulting liability or indemnity obligation to a reasonable and foreseeable scope; it is entirely equitable and appropriate for the noncomplying Party to indemnify the other for losses resulting from any such breach of Applicable Law. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposal provides that only the Party providing services is indemnified under this Agreement. Not to mention the extent of its deviation from generally-accepted contract norms providing precisely to the contrary, BellSouth's proposal is completely one-sided in that BellSouth, as the predominate provider of services under this Agreement, will be the only Party indemnified and the CLECs as the Parties predominately taking services under the Agreement will be the ones indemnifying BellSouth. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 8, Issue No. G-8 [Section 11.1]: What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-8.

A. Given the complexity of and variability in intellectual property law, this nine-state Agreement should simply state that no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by the Agreement and that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law. The Commission should not attempt to prejudge intellectual property law issues, which at BellSouth's insistence, the Parties have agreed are best left to adjudication by courts of law (see GTC, Sec. 11.5). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for Petitioners' position is that intellectual property law is a highly specialized area of the law where the bounds of what is and is not lawful are hashed out in case law that can vary among jurisdictions. Petitioners are fully prepared to ensure that their marketing efforts comport with those varying standards and will consult with experts in the field of intellectual property law when appropriate. Petitioners are not however willing to hamstring their marketing departments so that they are at a disadvantage and cannot do what other CLEC marketing departments can do when engaging in comparative advertising and other sales and marketing initiatives. Since Petitioners believe that the services they provide often compare favorably with those provided by BellSouth, we intend to preserve our right to engage in comparative advertising to the fullest extent permitted under the law. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The language proposed by BellSouth is inadequate because it proposes to significantly restrict Petitioners' rights to engage in comparative advertising or use BellSouth's name, marks, logo and trademarks in ways that are permitted by Applicable Law. Joint Petitioners are not prepared to give up those rights and we do not believe that it would be appropriate for the Commission to order us to do so by adopting BellSouth's proposed language. If BellSouth wants Petitioners to sacrifice rights, particularly those which could put Petitioners at a disadvantage relative to other competitors, it should be prepared to agree to an offsetting concession. It hasn't – and Joint Petitioners refuse to bow to

BellSouth's demand to give up something for nothing. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 9, Issue No. G-9 [Section 13.1]: Should a court of law be included in the venues available for initial dispute resolution?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-9.

A. The answer to the question posed in the issue statement is "YES". Either Party should be able to petition the Commission, the FCC or, if appropriate, a court of law for resolution of a dispute. No *legitimate dispute resolution venue should be foreclosed* to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different state commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners submit that it is unreasonable to exclude courts of law from the available list of venues available to address disputes under this Agreement. There is no question that courts of law have proper jurisdiction over disputes arising out of this Agreement,

and in fact, BellSouth and the Petitioners have agreed to language providing as much elsewhere in the Agreement, including in Sec. 11.5 of the General Terms and Conditions (and in prior agreements (see, e.g., KMC, NuVox and Xspedius agreements at Section 15)). Therefore, at a minimum, internal consistency militates in favor of including courts of law as available venues. Furthermore, in a number of instances, such as the resolution of intellectual property issues, tax issues, the determination of negligence, willful misconduct or gross negligence issues, petitions for injunctive relief and claims for damages, courts of law may be far better equipped to adjudicate such disputes. The Commission and the FCC are obviously the expert agencies with respect to a number of the issues that might arise in connection with this Agreement (and a court can if appropriate defer to the expertise of the state or federal commission under the doctrine of primary jurisdiction, if these types of complaints are brought directly to courts), however the foregoing types of disputes would tax heavily the Commission's expertise and resources.

In addition, administrative efficiency favors inclusion of the courts as venues for dispute resolution. Given that this Agreement, or an Agreement very similar to it, will likely be adopted across BellSouth's nine-state region, the courts may for certain disputes and in certain contexts provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC, to decide whether or not it will accept an enforcement role given the particular facts.

Petitioners' experience has been that achieving efficient regional dispute resolution is already too difficult and it need not be made more difficult by the elimination of the

courts as a possible venue for dispute resolution. As a result of the difficulties inherent in enforcing a multi-state agreement (technically, separate agreements for each state), BellSouth often is able to force carriers into heavily discounted, non-litigated settlements. Such settlements often are, heavily discounted to reflect the exorbitant costs associated with litigating an issue that exists region-wide, but that gives rise to a disputed amount that may be too low for a single carrier to justify litigating in each state jurisdiction separately. Foreclosing the courts as a venue for dispute resolution may prevent CLECs from litigating legitimate disputes that cannot efficiently be litigated across 9 different states or at the FCC, where dispute resolution is expensive and uncertain.

At bottom, elimination of the court of law as a venue option for dispute resolution unnecessarily forecloses a viable means for efficient dispute resolution. The parties must decide on a case-by-case basis the appropriate venue for a particular dispute, and a court of law with competent jurisdiction should not be excluded from those choices. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language that would require parties to resolve disputes regarding the interpretation or implementation of the Agreement only before the Commission or the FCC. BellSouth's position serves only to foreclose a necessary and appropriate venue for dispute resolution and to make dispute resolution under the agreement more burdensome than it need be. Indeed, BellSouth rejected other CLEC proposals designed to create efficient opportunities for regional dispute resolution. Moreover, BellSouth's proposal also fails to address problems created when a state commission does not have the ability

to grant relief requested – whether it be injunctive or compensatory. Accordingly, BellSouth's language should be rejected.

Elimination of a court of law as a possible venue for dispute resolution only benefits BellSouth. It needlessly forecloses a legitimate venue for resolving contract claims and disputes and it has the potential of unfairly forcing CLECs to re-litigate the same issue in 9 different states, or, if claimed damages spread across all the states are too small, not to pursue their rights to enforce compliance with the Agreement at all. While the FCC theoretically may be available as an enforcement venue for disputes arising out of the Agreement, the FCC is often slow to decide as a threshold matter, whether in fact, it will even accept an enforcement role under particular facts. Assuming that the FCC is willing to exercise its jurisdiction (if it decides it has jurisdiction), the FCC often takes many months and in some cases years to render decisions, which, in the context of business contracts that have daily and on-going impact, is unacceptable. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 10, Issue No. G-10 [Section 17.4]: ***This issue has been resolved.***

Item No. 11, Issue No. G-11 [Sections 19, 19.1]: ***This issue has been resolved.***

Item No. 12, Issue No. G-12 [Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-12.

A. The answer to the question posed in the issue statement is "YES". Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Moreover, silence with respect to any issue, no matter how discrete, should not construed to be such a limitation or exception. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' position is essentially a restatement of Georgia law, which the Parties have agreed is the body of contract law applicable to the Agreement. Because some of the Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this principle of Georgia law, all Petitioners believe it is important that the Agreement be explicit on this point. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it purports to adopt principles that differ from Georgia contract law (already agreed to by the Parties as being the governing contract law) – and, for that matter, black-letter contract law. Although the specifics of this argument might best be left to briefing by counsel, it is important to note that BellSouth's proposal attempts to turn universally accepted principles of contracting on their head.

The case of interconnection agreements presents no exception to the rule. Parties to a contract may agree to rights and obligations different than those imposed by Applicable Law. When they do so, however, they need to do it explicitly. It is far easier to set forth negotiated exceptions to rules than it is to set forth all the rules for which no exceptions were negotiated. Moreover, Petitioners must stress that in the context of their negotiations with BellSouth, they have refused to negotiate away rights for nothing in return. The Act and the FCC and Commission rules and orders do not exist for the purpose of seeing how CLECs and the Commission can detect and overcome attempts by BellSouth to evade obligations that are contained therein with contract language that skirts certain obligations. If BellSouth wants to free itself from an obligation under Section 251, or any other provision of Applicable Law (including FCC and Commission rules and orders) it needs to identify that obligation and offer a concession acceptable to Petitioners in exchange – otherwise, consistent with Georgia Law, all obligations under Applicable Law are incorporated into this Agreement. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No.13, Issue No. G-13 [Section 32.3]: How should the Parties deal with non-negotiated deviations from the state Authority- approved rates in the rate sheets attached to the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-13.

A. Any non-negotiated deviations from ordered rates should be corrected by retroactive true-up to the effective date of the Agreement within 30 calendar days of the date the error was identified by either Party. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners have entered into this Agreement with the expectation that the rates, incorporated in the Agreement, are accurate. Such intent is reflected in the undisputed language of this provision, which states, "[w]here a Commission has adopted rates for network elements or services provided under this Agreement, as of the effective date, it is the intent of the Parties that the rate exhibits incorporated into this Agreement will be those rates." Petitioners proposed language regarding true-up is intended to cover those situations in which BellSouth made an error inputting a rate into the rate sheets so that the rate for a particular UNE, interconnection, collocation or related service is not the rate approved by the Commission. In such an event, the incorrect rate should be corrected and retroactively applied to the effective date of the Agreement, to reflect the Parties' intent when executing the Agreement. The Commission should adopt the CLEC proposed language to avoid any inequitable result whereby Petitioners would be billed incorrect rates by BellSouth due to a BellSouth inputting error in the rate sheets of the Agreement. Petitioners recognize that a rate error could mean that the Petitioners are charged a higher or lower rate than the Commission-approved rate for the particular UNE or related service. Regardless, the Petitioners seek the Commission-approved rates and business certainty under this Agreement. Therefore, Petitioners propose that any rate error be corrected and applied retroactively to the effective date of the Agreement, whether the incorrect rate is higher or lower than the Commission-approved rate. Furthermore, Petitioners propose that thirty (30) days, a full billing cycle, is sufficient time for BellSouth to correct a rate error in the Agreement and true-up any resulting

incorrect billing to the effective date of the Agreement. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that upon request by either Party, errors in rate sheets will be corrected prospectively by amendment to the Agreement. It is BellSouth's position that any corrections to the rate sheets should be applied prospectively, regardless of whether the rate increases or decreases as a result of such amendment. During negotiations, BellSouth has argued that it is the Petitioners' as well as BellSouth's responsibility to ensure the accuracy of the rates in the Agreement. Accordingly, if either Party identifies an error in the rate sheets, the error is the fault of both Parties and therefore, the corrected rate will apply prospectively. BellSouth is incorrect in asserting that the CLECs are responsible for the accuracy of the rates in the Agreement. It is BellSouth that is obligated to charge the rates incorporating the rates that ordered by the Commission. Furthermore, it is BellSouth that has employee(s) designated to input Commission-approved rates in the rate sheets – not the CLECs – and the CLECs should not have to expend time and resources to check BellSouth's work (that should be BellSouth's job).

BellSouth has complete ownership over its template agreement (the base agreement for any interconnection negotiation) and makes all changes to the template as a result of negotiations. It is my experience, during the negotiations process, that BellSouth keeps its template agreement locked and will not give out the password to the negotiating party. Thus, only BellSouth can make changes to the Agreement, including the rate sheets.

BellSouth has argued that it must maintain strict control over the template agreement so a carrier cannot make any changes to the document without BellSouth's knowledge. In light of BellSouth's clear ownership over the documents, BellSouth cannot genuinely argue now that the CLECs have equal responsibility as BellSouth to ensure the accuracy of the rates included in the rate sheets of the Agreement. Accordingly, if CLEC or BellSouth identifies an error in the rate sheet, it is BellSouth's error and the error should be expeditiously corrected and the corrected rate applied retroactively to the effective date of the Agreement. Such a result will ensure consistency and business certainty between the Parties. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 14, Issue No. G-14 [Section 34.2]: Can either Party require, as a prerequisite to performance of its obligations under the Agreement, that the other Party adhere to any requirement other than those expressly stipulated in the Agreement or mandated by Applicable Law?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-14.

A. The Parties should not be permitted to hold performance hostage to terms not included in the Agreement and not mandated by Applicable Law. More specifically, neither Party should, as a condition or prerequisite to such Party's performance of its obligations under the Agreement, impose or insist upon the other Party's (or any of its End Users') adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a contract is to have any meaning and value – and it should have both, performance under a contract cannot be subjugated to conditions not incorporated therein or otherwise not required by Applicable Law. Petitioners are prepared to fulfill every provision of their proposed Agreement, and expect BellSouth to adhere to the same standard. It is not reasonable for BellSouth to cling to the notion that it may condition its performance on a condition precedent that is not incorporated in the Agreement and is not otherwise required by Applicable Law. For this reason, Petitioners have proposed language stating that "Neither Party shall … impose or insist upon the other Party's (or any of its End Users') adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law." *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not proposed any alternative language for Section 34.2. Instead, BellSouth maintains that the Parties are free to negotiate with each other as they may with third parties, and that neither Party should use this Agreement to interfere with a third party's contractual rights and obligations. That, however, is not the issue. BellSouth is free to contract with third parties – but it should not be free to alter or condition its obligations under this Agreement based on its contractual arrangements with third parties. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 15, Issue No. G-15 [Section 45.2]: If BellSouth changes a provision of one or more of its Guides that would cause CLEC to incur a material cost or expense to implement the change, should the CLEC notify BellSouth, in writing, if it does not agree to the change?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-15.

A. The answer to the question posed in the issue statement is "NO," CLECs should not be required to provide such notice within a set timeframe, as proposed by BellSouth. If the contemplated change to one or more of BellSouth's Guides would cause CLEC to incur a material cost or expense to implement the change, BellSouth and CLEC should negotiate an amendment to the Agreement to incorporate such change. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Nearly all of the CLECs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement. Despite these bad experiences, the CLECs recognize that BellSouth's Guides have a role in the implementation of this Agreement and others, and therefore, have worked with BellSouth to draft a provision that will allow for certain changes to BellSouth Guides to become effective without an amendment to the Agreement. Nevertheless, it is the CLECs' position that any proposed change to a BellSouth Guide that would cause the CLECs to incur a material cost must be accomplished by an amendment to this Agreement. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The undisputed portion of this provision provides that BellSouth will not make a change to one of its Guides that: (1) alters, amends or conflicts with any term of this Agreement; (2) changes any charge or rate, or the application of any charge or rate, specified in this

Agreement; (3) adds a new rate or rate element not previously specified in the Agreement; or (4) increases an interval set forth in this agreement, without signing an amendment to this Agreement reflecting the change. It is the position of the CLECs that a proposed change that will cause the CLECs to incur a material cost to implement is tantamount to any of the changes listed above that require an amendment. BellSouth's proposed language provides that a change in a Guide that will result in a material cost to the CLECs to implement will become effective if a CLEC fails to inform BellSouth in writing that it does not agree to such change or alteration within thirty (30) calendar days of notice of such change. It is BellSouth's position that such a change should be become effective without an amendment to the Agreement and, moreover, it should be the CLECs' responsibility to notify BellSouth if they do not agree with the change. CLECs cannot accept BellSouth's negative, opt-out approach whereby the change will go into effect unless the CLECs notify BellSouth of their disagreement. Such a burden is too onerous and the ramifications too severe to be acceptable to the CLECs. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS IT TOO BURDENSOME TO CLECS TO NOTIFY BELLSOUTH IF IT DOES NOT AGREE WITH A CHANGE INVOLVING A MATERIAL COST TO IMPLEMENT?

A. As can be easily imagined, with the number of BellSouth Guides that are referenced throughout the Agreement, including Guides for pre-ordering, ordering, collocation, E-911, jurisdictional factors, issue resolution, rights-of-way, programming, products and services, technical references, disputes, LNP, operational understanding, etc., CLECs cannot possibly keep up with on a daily basis and assess within 30 days every single

change to these Guides. Nevertheless, BellSouth proposes that CLECs keep track of every change, assess whether such a change would cause a material cost to implement, and provide notice to BellSouth of disagreement with such change, all within thirty (30) calendar days of the date BellSouth claims notice of such changes were made. Moreover, such notice may not be received on the date BellSouth marks as its issue date and it may not contain enough information about the change for a CLEC to determine whether it might cause it to incur material expenses. BellSouth's proposal places too much of a burden on the CLECs and the more equitable way to deal with such change is through the amendment process to the Agreement. While I believe that the CLECs, as well as BellSouth, have worked very hard to develop a workable solution for incorporating BellSouth's Guides, and subsequent changes to those Guides, into the Agreement, the CLECs cannot agree to BellSouth's proposal with regard to changes that will cause the CLECs to incur a material cost to implement. Given the proliferation of Guide references, accepting BellSouth's language would severely undermine the integrity of the Agreement and, indeed the entire Section 251/252 negotiation and arbitration process. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 16, Issue No. G-16 [Section 45.3]: If a tariff is referenced in the Agreement, what effect should subsequent changes to the tariff have on the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-16.

A. Petitioners have agreed to incorporate various tariff references proposed by BellSouth only subject to the condition that, to the extent that tariff changes are inconsistent with the provisions of the Agreement, or are unreasonable or discriminatory, they should not

supersede or become incorporated into the Agreement. Petitioners are unwilling to agree to reference future tariff provisions which they have no way of reviewing at this point without such protection. Without this condition, Petitioners will insist that all tariff references in the Agreement be replaced with language included directly in the Agreement and subject to change only by mutual agreement to amend the provisions. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. At BellSouth's insistence, the Agreement contains many references to BellSouth's various intrastate and interstate tariffs. In order to protect themselves from subsequent changes to these tariff provisions that may have an undue adverse effect, Petitioners have agreed to incorporate such tariff provisions only on the condition that subsequent changes to such tariff provisions (which cannot be reviewed at this time) will be incorporated into the Agreement only to the extent that they are reasonable, nondiscriminatory and not otherwise inconsistent with the Agreement. The alternative (agreeable to Petitioners but apparently not BellSouth) would be to simply replace all tariff references with language that can only be amended by mutual agreement of the Parties. In this regard, it is important to remember that when Petitioners order something under the Agreement, they are not ordering a tariffed service. When Petitioners want to order a tariffed service, as opposed to something under this Agreement, they will order pursuant to the relevant tariff. The Agreement itself is not an agreement to order tariffed services. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate in that it makes no provision for instances in which a Party objects to the incorporation of tariff changes into the Agreement that a Party believes to be unreasonable, discriminatory or otherwise inconsistent with the Agreement. If BellSouth were to prevail in its position, Petitioners would insist that all tariff references in the Agreement be replaced.

Moreover, BellSouth fails to acknowledge the narrow circumstances in which the CLECs seek to negotiate an amendment: in those instances when the CLECs feel a tariff revision is unreasonable, discriminatory or otherwise inconsistent with the Agreement. BellSouth's assertion that the Commission has a process for disputing proposed tariff provisions is inapposite as it does not address the fact that the services ordered under the Agreement are governed by the Agreement, regardless of whether various tariff provisions are referenced to fill out its terms. (BellSouth also ignores the fact that the Petitioners simply do not have the resources to monitor each and every tariff change BellSouth proposes to make to its nine sets of state tariffs and to its federal tariffs.) Petitioners have negotiated with BellSouth and instituted this Arbitration so that their rights will be governed by the terms and conditions of this Agreement. Nevertheless, the CLECs have agreed to numerous tariff references throughout the Agreement, largely for the convenience of BellSouth, subject to the conditional language proposed by Petitioners. Therefore, where BellSouth makes unreasonable and discriminatory changes to such tariffs, those changes should not become part of the Agreement, by virtue of the fact that the Parties had agreed to refer to different tariff terms. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

RESALE (ATTACHMENT 1)

Item No. 17, Issue No. 1-1 [Section 3.19]: ***This issue has been resolved.***

Item No. 18, Issue No. 1-2 [Section 11.6.6]: ***This issue has been resolved.***

NETWORK ELEMENTS (ATTACHMENT 2)

Item No. 19, Issue No. 2-1 [Section 1.1]: ***This issue has been resolved.***

Item No. 20, Issue No. 2-2 [Section 1.2]: ***This issue has been resolved.***

Item No. 21, Issue No. 2-3 [Section 1.4.2]: ***This issue has been resolved.***

Item No. 22, Issue No. 2-4 [Section 1.4.3]: (A) ***This issue has been resolved.*** *(B) In the event of such conversion, what rates should apply?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-4(B).

A. For a conversion of a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services, any non-recurring charges should be as set forth in Exhibit A of Attachment 2 or the relevant tariff, as appropriate. Since BellSouth has proposed no charges, no charges should apply. If any charges were to apply, such charges should be commensurate with the work required to effectuate the conversion (cross connect only, billing change/records update only, etc.). *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. To the extent that a CLECs request a conversion of a UNE (or part thereof) to Other Services or tariffed services pursuant to Attachment 2, such charge should logically be included in the rates set forth in Exhibit A of Attachment 2. Exhibit A of Attachment 2 includes rates for various types of conversions, including CLEC-to-CLEC conversions, service order conversions, and loop/transport combination conversions. Accordingly, there is no reason why rates, if any, for conversions of UNEs or Combinations (or parts thereof) to Other Services or tariffed services cannot similarly be included in Exhibit A of Attachment 2. Moreover, any conversion rates included in the Agreement should be commensurate with the work required to effectuate the conversion (cross connect only, billing change/records update only, etc.) and should not be considered an opportunity to price gouge CLECs by charging full NRCs, as though the circuit were being established as a new circuit or disconnected. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it is ambiguous in that it implies that there may be other applicable charges not specified in the Agreement. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 23, Issue No. 2-5 [Section 1.5]: (A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, which Party should bear the obligation of identifying those service arrangements? (B) What recourse may BellSouth take if CLEC does not submit a rearrange or disconnect order within 30 days? (C) What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-5(A).

A. In the event UNEs or Combinations are no longer offered pursuant to, or are no longer in compliance with, the terms set forth in the Agreement, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to Other Services pursuant to Attachment 2. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth should be responsible for identifying any CLEC service arrangements that it seeks to transition from UNEs or Combinations to Other Services pursuant to Attachment 2. It is logical that the Party seeking a change under the Agreement should be responsible for identifying such change to the other Party. Any other result would place the burden on the Party that does not necessarily think that a service change is desirable or necessary. Consequently, if BellSouth insists that a UNE or Combination be transitioned to Other Services pursuant to Attachment 2 or tariffed services, it should, at least, be responsible for identifying such service arrangement to the CLECs. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it proposes that the CLEC will be responsible for identifying those service arrangements that BellSouth believes should no longer be offered pursuant to the Agreement. If it is BellSouth that wants the CLEC to transition a UNE or Combination to Other Services, BellSouth should notify the CLEC of its request. It is possible (if not likely) that BellSouth and the CLEC will have differing views as to which UNEs and Combinations should and should not be offered pursuant to the Agreement. Therefore, BellSouth should not rely on the CLECs to read its mind and identify service arrangements for transition. If BellSouth believes that a CLEC should be transitioning its service, it should notify the CLEC of its request. The CLECs, in turn, and in good faith, will respond to the BellSouth notice and, if required, begin the transition process in compliance with the terms and conditions of this Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HAS BELLSOUTH RECENTLY PROVIDED NEW LANGUAGE REGARDING THE IMPACT OF THE COURT OF APPEALS FOR THE DC CIRCUIT'S DECISION IN *"USTA II"*?

A. Yes. As of this date, the Parties have not negotiated that language and Petitioners have not agreed to it (nor will they). However, the Parties have agreed that they will discuss a plan of action for incorporating changes to the Agreement (whether it be to negotiated or arbitrated provisions). BellSouth has agreed to put forth its proposal for doing so first. As of this date Petitioners do not have BellSouth's proposal. Accordingly, Petitioners reserve all rights to file propose contract language and present testimony on how, if at all,

the *USTA II* decision should be incorporated into the Agreement or otherwise factor into this arbitration proceeding. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-5(B).

A. If CLEC does not submit a rearrange or disconnect order within thirty (30) days, BellSouth may disconnect such arrangements or services without further notice, provided that the CLEC has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth should not be able to disconnect any CLEC service arrangement if there is a dispute as to whether such a service arrangement should no longer be offered pursuant to, or is no longer is in compliance with, the terms of the Agreement. BellSouth should not be able to engage in self-help whereby it disconnects a CLEC service in light of a dispute. The Commission must compel BellSouth to adhere to the Dispute Resolution provisions of the Agreement. Otherwise, BellSouth's self-help actions will result in harm to the CLECs' business as well as harm South Carolina consumers. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would allow it to unilaterally disconnect the CLECs' service arrangements if the CLECs do not submit orders to rearrange or disconnect those

arrangements that BellSouth believes should not be provided pursuant to, or are no longer in compliance with, the terms of the Agreement by the thirty-first (31st) calendar day after the effective date of this Agreement. BellSouth's proposed language is inadequate in that it does not address how the Parties will proceed if there is a dispute as to whether a service arrangement should or should not be provided pursuant to the Agreement. Rather, BellSouth seeks to unilaterally disconnect CLEC service, despite a dispute. As stated above, such result will not only irreparably harm the CLECs' business in South Carolina, it will also harm South Carolina consumers, as their service will be impaired, if not terminated. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-5(C).

A. For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of the Agreement, non-recurring charges for the applicable UNE or cross connect from Exhibit A of Attachment 2 should apply. Disconnect charges should not apply to services that are being physically rearranged or re-terminated. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Agreement should set forth the non-recurring rate for such re-termination, which is likely to be nothing more than a cross-connect. All relevant rates for UNEs, Combinations, and related services should be included in the Agreement, including re-termination. That way, the Parties will be clear as to the charges involved and will be less likely to engage in billing disputes. Furthermore, there should be no disconnection charges associated for the physical rearrangement or re-termination of services that are no

longer offered pursuant to the Agreement. The CLECs are not disconnecting a service, but rather are rearranging a service that cannot be maintained as currently offered under the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate in that it simply states that "applicable disconnect charges will apply to a UNE/Combination that is rearranged or disconnected." Already it is clear that the Parties have a dispute over what is "applicable". BellSouth should not be able to assess disconnection charges when services are being rearranged or re-terminated – the services are not being disconnected. BellSouth provided no persuasive reasons during negotiations as to why disconnect charges should apply if a UNE or Combination is converted to Other Services or BellSouth tariffed services. Under such a scenario, the CLECs are not requesting that its service be disconnected, but rather service is being converted to another type of service because the existing service will no longer be offered once CLECs begin operations under the terms of the new Agreement. At bottom, since the CLECs are not requesting a disconnection, they should not be required to bear the disconnection charges. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 24, Issue No. 2-6 [Section 1.5.1]: ***This issue has been resolved.***

Item No. 25, Issue No. 2-7 [Section 1.6.1]: What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-7.

A. If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations, then BellSouth should perform such Routine Network Modifications at no additional charge and within its standard provisioning intervals. If BellSouth has not anticipated a requested or necessary network modification as being a Routine Network Modification and, as such, has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of Attachment 2, then BellSouth should notify the CLEC of the required Routine Network Modification and should request that CLEC submit a Service Inquiry to have the work performed. Each unique request should be handled as a project on an individual case basis. BellSouth should provide a TELRIC-compliant price quote for the request, and upon receipt of a firm order from CLEC, BellSouth should perform the Routine Network Modification within a reasonable and nondiscriminatory interval. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Routine Network Modifications generally should already be factored into BellSouth's rates and intervals. The FCC's rules require that costs associated with Routine Network Modifications can and should be recovered by BellSouth as part of the expense associated with network investment, and therefore they should already have been factored into BellSouth's TELRIC cost studies. Indeed, the FCC's rules are very clear that there may not be any double recovery by BellSouth of Routine Network Modification costs by

virtue of BellSouth recovering both the cost of the UNE and a new charge for Routine Network Modifications that already have been factored into the UNE rate. The FCC's rules are also very clear that the onus is on BellSouth to affirmatively demonstrate that a requested modification was not contemplated by BellSouth as a "Routine Network Modification", and that the costs associated with the requested modification were not factored into BellSouth's TELRIC cost studies in any way whatsoever.

Petitioners' proposed language properly requires BellSouth to demonstrate that a requested modification is not Routine, and ensures that the Petitioners will be able to provision service to new customers as quickly as possible without being delayed by disputes with BellSouth about whether a particular modification is, in fact, a "Routine Network Modification". To the extent that the requested modification is a "Routine Network Modification" that has not been factored into BellSouth's UNE rates, the language proposed by the Petitioners suggests that each such unique request be handled as a project on an individual case basis. Once a type of request has been handled in this way, it will no longer be considered unique and, subsequent requests for the same type of modification should be processed expeditiously based on prior experience. Petitioners' proposed language also ensures that the rate BellSouth charges for the modification is a TELRIC-compliant rate and allows the requesting carrier to dispute the rate proposed by BellSouth without a delay in provisioning service to the requesting carrier's new customer. Accordingly, under the Petitioners' language, BellSouth will be precluded from delaying the provisioning of service to end users pending the outcome of any debate regarding the appropriate characterization of a requested modification, or the appropriate charges. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. HAS BELLSOUTH EVER BILLED YOUR COMPANY FOR ROUTINE NETWORK MODIFICATIONS?

A. Not to my knowledge. It is my understanding that these modifications are done as a matter of course and are built in the applicable UNE rates. *[Sponsored by **3 CLECs:** M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language is problematic for a number of reasons. First, Petitioners want BellSouth to perform Routine Network Modifications as a matter of routine practice – we do not want to have to issue a request that they be performed other than the LSR requesting the element. Adding a secondary request in all instances adds unnecessary complications and potential for delay. Second, BellSouth's proposed language for when it will not seek an additional charge for a Routine Network Modification is ambiguous. Petitioners submit that Routine Network Modifications are included in current UNE rates. However, they are willing to entertain the concept of an additional charge in the rare and unanticipated instance that a Routine Network Modification was not anticipated by BellSouth and was therefore not reflected in any way in the cost studies that BellSouth used in the UNE pricing dockets that resulted in the Commission's setting of UNE rates. The ambiguity in BellSouth's proposed language stems from the fact that it could claim that it had not anticipated a particular modification even though such a function was reflected in its cost studies. Third, BellSouth's language includes an inappropriate "pay first" provision. Petitioners are willing to pay BellSouth a TELRIC compliant rate for any Routine Network Modification not previously considered in BellSouth's current

UNE rates. However, Petitioners will not agree to pay whatever rate BellSouth demands (as would be required under BellSouth's language). So that the customer does not experience delay in getting service, BellSouth should provision upon receipt of a firm order. Any dispute about the appropriate rate can be handled through the normal bill dispute process and in a manner that does not impact the customer or Petitioner's ability to serve the customer. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 26, Issue No. 2-8 [Section 1.7]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-8.

A. The answer to the question posed in the issue statement is "YES". BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners' proposed language seeks to ensure that BellSouth will provide UNEs and UNE Combinations commingled with services, network elements and any other offering it is required to provide pursuant to Section 271, consistent with the FCC's rules, which do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs.

The FCC has defined "commingling" as the connecting, attaching, or otherwise linking of a UNE, or a UNE Combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. Commingling is different from combining (as in a UNE Combination). In the TRO, the FCC specifically eliminated the temporary commingling restrictions that it had adopted and affirmatively clarified that CLECs are free to commingle UNEs and combinations of UNEs with services (*i.e.,* non-UNE offerings), and further clarified that BellSouth is required to perform the necessary functions to effectuate such commingling. The FCC has also concluded that Section 271 places requirements on BellSouth to provide network elements, services and other offerings, and those obligations operate completely separate and apart from Section 251. Clearly, elements provided under Section 271 are provided pursuant to a method other than unbundling under section 251(c)(3). Therefore, the FCC's rules unmistakably require BellSouth to allow the Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to Section 271. In short, BellSouth's efforts to isolate – and thereby make useless Section 271 elements – should be flatly rejected. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth interprets the FCC's rules as providing no obligation for it to commingle UNEs and Combinations with elements, services, or other offerings that it its required to

provide to CLECs under Section 271. BellSouth's language turns the FCC's commingling rules on their head, and nothing in the FCC's rules or the TRO supports its interpretation. In fact, the FCC specifically rejected BellSouth's creative but erroneous interpretation of the TRO (including paragraph 35 of the errata to the TRO) when it concluded that CLECs may commingle UNEs or UNE combinations with facilities or services that a it has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act. Services obtained from BellSouth pursuant to Section 271 obligations are obviously obtained from BellSouth pursuant to a method other than Section 251(c)(3) unbundling, and therefore are not subject to any restrictions on commingling whatsoever. The Commission should therefore reject BellSouth's proposal as anticompetitive and unlawful. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 27, Issue No. 2-9 [Section 1.8.3]: When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-9.

A. When multiplexing equipment (equipment that allows multiple voice and data streams and signals to be carried over the same channel or circuit) is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service (which in most cases will be a UNE loop). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a CLEC requests a commingled circuit in which multiplexing equipment is attached, then the multiplexing equipment should be billed at the lower bandwidth of service – *i.e.,* per the jurisdiction of the loop if a loop is attached or per the lower bandwidth transport, if the circuit involves commingled transport links. It is my understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment (other than DSLAMs). Therefore, the multiplexing should be at UNE rates when a UNE loop is part of the circuit. At the very least, the CLECs – as the Party ordering and paying for the service – should be able to choose whether it wants to purchase multiplexing out of the Agreement (connected to a UNE) or out of a BellSouth tariff. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that when multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher bandwidth service. The problem with this language is that, in a commingled circuit incorporating a DS1 UNE loop and DS3 special access transport (the most common kind of commingled circuit we expect to see), the multiplexing element would get billed at special access rates even though it is by definition part of the loop UNE. On a commingled circuit involving DS1 UNE transport and DS3 special access transport, it is not clear what jurisdiction the multiplexing would be billed from. Such a lack of clarity can only lead to unnecessary

disputes. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 28, Issue No. 2-10 [Section 1.9.4]: Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-10.

A. The answer to the question posed in the issue statement is "YES". The recurring charges for UNEs, Combinations, and Other Services should be prorated based upon the number of days that the UNEs, Combinations, and Other Services are in service. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. It is axiomatic that a customer should pay only for what he receives, else the seller receives an unwarranted windfall. New entrants cannot afford to subsidize BellSouth by paying for elements and services that they do not use. Petitioners have therefore offered language stating that "fractionalized billing shall apply," such that recurring charges are prorated according to the number of days in the month that they were used. This is the way it has worked since we started buying UNEs from BellSouth and there is no rational reason to change this now. These terms proposed by Petitioners are commercially reasonable, as well as fair. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language seeks to impose upon Petitioners — for the very first time — a "minimum billing period." There is no valid or reasonable justification for this vague and undefined proposal. If a CLEC orders a UNE and its customer elects to switch to another carrier and the UNE loop is disconnected after say 10 days, there is no compelling reason why any of the Petitioners should have to pay for that UNE loop after it is disconnected. A minimum billing period of 30 days, 2 months, etc. (it is not clear from the language how BellSouth proposes to pick) would carry with it exclusive use right thereby inhibiting a customer's ability to switch carriers as he or she wishes. Moreover, to my knowledge, no minimum billing periods were built into the TELRIC-based prices the Commission approved for UNEs. BellSouth's proposed undefined minimum billing periods are both anti-competition and anti-consumer and should be flatly rejected. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. IS IT LIKELY THAT THE PARTIES WILL SETTLE THIS ISSUE?

A. Yes. Petitioners understand that BellSouth merely seeks to bill for an initial 30 day increment and then will credit Petitioners for any period short of 30 days for which the UNE, UNE Combination or Other Service was not used. Thus, as we understand BellSouth's current position, BellSouth will eventually bill us only for the number of days that the UNE, UNE Combination or Other Service was in service – however, they will use a two-step process involving an initial bill for 30 days and a subsequent credit for the unused portion of the 30 day period to get there. While we are waiting to see contract language from BellSouth to match this position, it appears that we at least are not

opposed to the two step process as it ultimately gets us where we need to be. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 29, Issue No. 2-11 [Section 2.1.1]: ***This issue has been resolved.***

Item No. 30, Issue No. 2-12 [Section 2.1.1.1]: Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell cite, Mobile Switching Center or base station do not constitute loops?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-12.

A. The answer to the question posed in the issue statement is "NO". The Agreement should not include a provision declaring that facilities terminating to another carrier's switch or premises, a cell site, Mobile Switching Center, or base station do not constitute loops. Such a provision would be inconsistent with the FCC's TRO. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. There is no basis to add BellSouth's expansive gloss to the what the FCC has had to say with respect to what is and is not a loop. The FCC has never limited the availability of loops according to the type or location of the customer that uses it. Thus, BellSouth may not unilaterally restrict facilities based on the type of customer served or the location of that customer. Thus, if a Petitioner requests a UNE Loop for the purpose of serving another carrier, including a cellular provider, and that facility is what the FCC considers to be a UNE Loop and will be used in accordance with FCC rules, BellSouth should be

required to provide it on an unbundled basis. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has recently proposed new language that addresses some of the inadequacies identified previously by the Petitioners. The Parties are currently considering a redlined version of that language. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 31, Issue No. 2-13 [Section 2.1.1.2]: Should the Agreement require CLEC to purchase the entire bandwidth of a Loop in all situations?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-13.

A. The answer to the question posed in the issue statement is "NO". Petitioners should not be required to purchase the entire bandwidth of a Loop, in cases where Applicable Law permits line sharing, line splitting, or the ability of a customer to retain BellSouth xDSL-based services while purchasing voice serves from a CLEC using a UNE loop. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' proposed language in Section 2.1.1.2 merely seeks to retain whatever rights CLECs presently enjoy with respect to loop access, including the right to obtain a portion of loop bandwidth so that voice-grade services may be provided by one carrier and other services, such as xDSL-based transport services may be provided by another. Thus, to the extent that Applicable Law (including state law) permits CLECs to continue to order

line sharing, engage in line splitting or other arrangements whereby a customer may choose to retain BellSouth-provided xDSL-based transport services, Petitioners wish to preserve these rights in the Agreement. In sum, Petitioners' proposed language does nothing more than ensure that the Agreement explicitly affords them the loop unbundling rights already granted to them by regulatory authorities and non-discriminatory treatment vis-à-vis other carriers. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's has proposed language that will provide Petitioners with a portion of a loop's bandwidth only upon separate agreement of the Parties. BellSouth refuses to incorporate language requiring it to comply with Applicable Law. This position is unreasonable, as it would force Petitioners to secure BellSouth's agreement in order to obtain the shared UNE loop options already guaranteed them by Applicable Law. Moreover, BellSouth's proposed language simply introduces unnecessary ambiguity into the Agreement, because it would not be explicit as to the loop unbundling parameters with which BellSouth must comply. It is not commercially reasonable to use ambiguous terms in any contract where more specific language is available. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS ISSUE 2-13 APPROPRIATE FOR ARBITRATION?

A. BellSouth's position statement states that Issue 2-13 should not even be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in Section 251of the 1996 Act. This statement is incorrect. Regardless of whether the

shared use of a UNE loop is mandated under Section 251 or state law, this issue plainly involves a dispute over and related to loop unbundling which is clearly encompassed by Section 251. Moreover, this issue goes directly to ensuring that BellSouth's practices are just and reasonable, an issue which is always within the jurisdiction of this Commission. Finally, loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning. In fact, it was on this ground that the North Carolina Commission arbitration panel recently recommended rejection of BellSouth's similar argument with respect to unbundled switching. For these reasons, Issue 2-13 is properly before this Commission. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 32, Issue No. 2-14 [Sections 2.1.2, 2.1.2.1, 2.1.2.2]: ***This issue has been resolved.***

Item No. 33, Issue No. 2-15 [Section 2.2.3]: Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-15.

A. The answer to the question posed in the issue statement is "NO". The unbundling relief provided under FCC Rule 51.319(a)(3) is only applicable to Fiber-to-the-Home Loops deployed on or after October 2, 2003 (the effective date of the FCC's TRO). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners have proposed language that first cites to FCC Rule 51.319(a)(3), setting forth BellSouth's obligation to unbundle Fiber-to-the-Home ("FTTH") loops, and then states

that any unbundling relief adopted by the FCC for FTTH loops is applicable only to loops deployed after the effective date of the FCC's TRO. This language comports exactly with the FCC's express distinction between existing FTTH loops and newly-deployed FTTH, or so-called "greenfield" FTTH loops. Moreover, there is nothing in the TRO that supports retroactive application of the relief granted or some other cut-off date for "new" network deployment. Accordingly, Petitioners' language simply preserves access to the FTTH loops to which federal law entitles them. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has offered language that references FCC Rule 51.319(a)(3) without elaboration or explanation. It refuses to accept Petitioners' language regarding the effective date of the TRO. This position is inappropriate because it does not make clear that FTTH unbundling relief will not apply to loops already deployed, which is the result that the FCC demonstrably intended by culling out "greenfield" loops for unbundling relief. BellSouth's proposed language is thus incomplete, rendering the Agreement vague and ambiguous.

In its position statement, BellSouth asserts that the FCC's finding on FTTH loops was not "contingent upon a deployment date", and thus presumably affects all FTTH loops immediately, without limitation. That position is unfounded. FCC orders are presumed to become law, and affect substantive rights, on their effective date. That legal truism does not have to be expressly stated in every FCC rule. Accordingly, the FTTH rules can apply only to facilities installed after the order's effective date. In addition, and more

importantly, both the FCC Rules and the TRO expressly parse out "new builds", or "greenfield" fiber loops and state that they are subject to unbundling relief. As a matter of logic, then, FTTH loops that are not new must continue to be unbundled. BellSouth's reliance on the lack of a "deployment date contingency" in the FCC's decision is therefore misplaced. Petitioners' more comprehensive language should therefore be adopted. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 34, Issue No. 2-16 [Section 2.3.3]: ***This issue has been resolved.***

Item No. 35, Issue No. 2-17 [Sections 2.4.3, 2.4.4]: (A) What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report when no trouble is ultimately found to exist?
(B) What rate should apply when BellSouth is required to dispatch to an end user location more than once due to incorrect or incomplete information?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-17(A).

A. TELRIC-compliant rates to be approved by the Commission and incorporated in Exhibit A of Attachment 2 should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report and in order to confirm the working status of a UNE Loop. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. FCC rules require that unbundled network elements be provisioned at forward-looking, cost-based rates (*i.e.,* TELRIC). Accordingly, all facilities and work involved in provisioning, maintaining and repairing UNEs, including loops, must be priced at

TELRIC-compliant rates. When testing and dispatch is requested in order to ensure that the loop that a Petitioner pays for actually works, such services should be performed at TELRIC-compliant rates.

The result is no different when the issue is framed "when no trouble is ultimately found to exist." Line testing, especially in response to a customer complaint, is a necessary function of provisioning UNEs and UNE Combinations. If no trouble is actually found, Petitioners are willing to compensate BellSouth at TELRIC compliant rates. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language states that the rates applicable to testing and dispatching service for local loops will come from its various tariffs. The first tariff is the BellSouth FCC Tariff Number 1. The rates contained in that tariff, however, were not set by a state commission under TELRIC principles. BellSouth's language also refers to its GSST tariffs in Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Florida and North Carolina. Finally, BellSouth states that testing and dispatch rates in South Carolina and Georgia will be in the Non-Regulated Services Pricing tariffs for those states. These state tariffs are also an inappropriate source, as they were not derived for use in connection with UNE provisioning. In fact, these tariffs set prices for BellSouth residential retail services. It is not appropriate for an incumbent to charge retail rates for the wholesale provisioning of network elements.

The following examples illustrate why BellSouth's proposed rate language is improper. In South Carolina, BellSouth would charge $110.00 for a 45-minute premises visit, compared with retail rates of $12.70 — $14.05 per month for flat-rated basic service and $32.00 per month for the Complete Choice® plan that includes 6 features. On their face, these dispatch charges significantly undercut Petitioners' ability to compete effectively. Accordingly, BellSouth's proposed pricing language for loop service dispatch should be rejected in favor of terms that explicitly provide for TELRIC-compliant prices. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-17(B).

A. TELRIC-compliant rates to be approved by the Commission and incorporated in Exhibit A of Attachment 2 should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report which includes incorrect or incomplete information. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As explained above with respect to Issue 2-17(A), all rates that apply to the ordering, provisioning, maintenance and testing of UNEs must be priced at TELRIC. There is no reasonable basis to alter this rule in the event that a particular loop requires a dispatch more than once. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language is inadequate because instead of referencing TELRIC-compliant rates it again references its FCC Tariff No. 1 and various state tariffs for the

dispatch rates that apply in the event multiple dispatches are needed due to "incorrect or incomplete information". These tariffed rates are not lawful in the context of UNEs and are anticompetitive in the wholesale context. Further, in the context of this sub-issue, they appear to be blatantly punitive. BellSouth has not explained what "incorrect or incomplete information" means, or how it is to be determined in practice. For example, what type of error would rise to the level of "incomplete"? Who would decide? BellSouth's position on this issue is ambiguous. It could be that BellSouth would deem every multiple-test situation as "due to incorrect information" that is subject to expensive tariffed rates as opposed to TELRIC rates. This result would of course contravene settled unbundling law and policy, as it would impose improper costs on UNE access. For these reasons, the Agreement should state that TELRIC compliant rates for testing UNE Loops will apply in the case of additional dispatch caused by incomplete or incorrect information. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-18(A).

A. Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' language incorporates by reference FCC Rules 51.319(a)(1)(iii) — the Line Conditioning rule — and 51.319(a)(1)(iii)(A) — the definition of Line Conditioning — to describe BellSouth's obligations. This language sets forth, in a simple yet precise way, what BellSouth should be able and willing to provide to Petitioners within the Agreement. This language does not provide Petitioners with anything more than what the FCC rules prescribe. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it provides an extensive definition of Line Conditioning that refuses to reference or incorporate the applicable FCC Rule 51.319(a)(1)(iii). Petitioners are not interested in BellSouth's rewriting of the rule which conflates BellSouth's Line Conditioning obligations with its Routine Network Modification obligations. The FCC has rules that govern each. Line Conditioning is not limited to those functions that qualify as Routine Network Modifications.

BellSouth's position statement demonstrates the analytical errors in its contract language, as we have explained. It states that Line Conditioning should be defined as "routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers". This position does not comport with FCC Rule 319. "Routine network modification" is not the same operation as "Line Conditioning" nor is xDSL service identified by the FCC as the only service deserving of properly engineered loops. Neither BellSouth's position nor its contract language complies with the law. The FCC created and kept two separate rules to govern these distinct forms of line modification,

and the Agreement must reflect this FCC decision. BellSouth's proposal would effectively nullify one of those rules. Petitioners' language should therefore be adopted. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-18(B).

A. BellSouth should perform Line Conditioning in accordance with FCC Rule 47 CFR 51.319 (a)(1)(iii). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' request only that the Agreement and BellSouth's obligations thereunder comport with federal law. Petitioners are unwilling to accept BellSouth's attempt at diluting its obligations by effectively eliminating Line Conditioning obligations that the FCC left in place. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate for the same reasons discussed previously with respect to issue 2-18(A). BellSouth's proposed language inappropriately attempts to limit its Line Conditioning obligations. For its position statement, BellSouth essentially re-states the same position it provided for Issue 2-18(A). That is, BellSouth will only perform Line Conditioning as a "routine network modification", in accordance with Rule 51.319(a)(1)(iii), to the extent that BellSouth would do so for its own xDSL customers. For the reasons I have explained, this position is meritless. First, to discuss "routine network modification" as occurring under Rule 51.319(a)(1)(iii) is simply wrong: that

term does not appear anywhere in Rule 51.319(a)(1)(iii). Second, it is not permissible under the rules for BellSouth to perform Line Conditioning only when it would do so for itself. The FCC has placed no such limitation on Line Conditioning. Third, BellSouth's repeated insistence that Line Conditioning is only for xDSL services contravenes Rule 51.319(a)(1)(iii), which is absolutely neutral as to the services that can be provided over conditioned loops. The Agreement should accurately reflect BellSouth's obligations as to Line Conditioning, and therefore should include Petitioners' language on that matter, which references the FCC's governing rule. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-19.

A. The answer to the question posed in the issue statement is "NO". The agreement should not contain specific provisions limiting the availability of Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners will not agree to language that provides them no right to order Line Conditioning (in this case, load coil removal) on loops that are longer than 18,000 feet. Nothing in Applicable Law would support such a limitation. Petitioners are entitled to obtain loops that are engineered to support whatever service we choose to provide. In refusing to condition loops (in this case, load coil removal) over 18,000 feet in length,

BellSouth may preclude Petitioners from providing innovative services to a significant number of customers. In unreasonably attempting to restrict its Line Conditioning obligations, BellSouth is attempting to dictate the service that Petitioners may provide by limiting those services to those that *BellSouth* chooses to provide. This result is contrary to the 1996 Act, is anticompetitive, and may deprive South Carolina consumers of innovative services that CLECs may choose to provide and that BellSouth would prefer not to. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language stating that it "will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length" as a matter of course, but that it will remove load coils on longer loops only at the CLEC's request and at the rates in "BellSouth's Special Construction Process contained in BellSouth's FCC No. 2". This language is unacceptable. First, it has no basis in Applicable Law. Nothing in any FCC order allows BellSouth to treat Line Conditioning in different manners depending on the length of the loop. Second, BellSouth's imposition of "special construction" rates for Line Conditioning is inappropriate. As Petitioners have explained with respect to several issues in this arbitration, the work performed in connection with provisioning UNEs must be priced at TELRIC-compliant rates. BellSouth's special construction rates are not TELRIC compliant. Indeed, BellSouth's Tariff FCC No. 2 does not include rates for Line Conditioning, but rather lists the charges imposed on specific carriers for hanging or burying cable, adding UDLC facilities, and the like. Petitioners therefore do not know what rates they would pay for Line Conditioning under this section. Such ambiguity is

unacceptable. Accordingly, the Agreement should state that TELRIC-compliant rates shall apply to Line Conditioning for loops over 18,000 feet in length. For all these reasons, BellSouth's language should be rejected. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. ARE YOU CURRENTLY CONTEMPLATING THE DEPLOYMENT OF TECHNOLOGIES THAT MIGHT REQUIRE THE TYPE OF LINE CONDITIONING THAT BELLSOUTH SEEKS TO EXCLUDE FROM THE AGREEMENT?

A. Yes. We are currently exploring at least two technologies designed to derive additional bandwidth from "long" loops. One is called "Etherloop" which should work on loops up to 21,000 feet in length and another is called "G.HDSL Long" which should work on loops up to 26,000 feet in length. *[Sponsored by **1 CLEC**: J. Fury (NVX)]*

Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-20.

A. Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners seek to ensure that BellSouth will, at their request, remove bridged tap from loops as necessary to enable the loop to carry Petitioners' choice of service. Federal law provides, without limitation, that CLECs may request this type of Line Conditioning, insofar as they pay for the work required based on TERLIC-compliant rates. Petitioners' language comports exactly with these parameters, stating simply that they may request removal of bridged tap at the rates already provided in the Agreement, excepting bridged tap of more than 6,000 feet, which the parties agree should be removed without charge. Petitioners have the right to provide the service of their choice, and to obtain loops that can carry those services. The Commission should reject BellSouth's attempt to limit CLEC service offerings to those BellSouth also chooses to provide. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require it to remove only bridged tap "that serves no network design purpose" and is between "2500 and 6000 feet". This language substantially restricts Petitioners' ability to obtain loops that are free of bridged tap, in two ways. First, it leaves entirely to BellSouth's discretion which bridged tap "serves no network design purpose", which is an arbitrary and unworkable standard. Moreover, it is not for BellSouth to unilaterally roll-back its federal regulatory obligations. Second, BellSouth's language precludes the removal of bridged tap that is less than 2500 feet in length, which may significantly impair the provision of high-speed data transmission. Nothing in federal law supports a refusal to remove bridged tap, regardless of the length of or their location on the loop. BellSouth's language would have the effect of depriving

consumers of competitive choice of service, and would improperly gate Petitioners' entry into the broadband market. This proposal is unlawful, anticompetitive, and should be rejected.

BellSouth makes two points in its position statement that require comment. First, BellSouth claims that removing bridged tap that either "serves no network purpose" or is "between 0 and 2500" feet constitutes "creation of a superior network". This position is flatly incorrect, as the FCC has expressly held that Line Conditioning does not result in a "superior network". Rather, it is the work necessary to ensure that existing loops can support the services that a CLEC chooses to provide. BellSouth is not building a "superior network" in this instance, it is merely modifying its existing network. Moreover, removing bridged tap pursuant to the CLEC's request is absolutely required by Rule 51.319(a)(1)(iii) (Line Conditioning). Second, BellSouth states that this issue is "not appropriate for arbitration" because it somehow involves "a request by the CLECs that is not encompassed within … Section 251". Yet, the FCC established the Line Conditioning rule under its Section 251 authority. Accordingly, this issue is squarely within this Commission's jurisdiction. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 39, Issue No. 2-21 [Section 2.12.6]: ***This issue has been resolved.***

Item No. 40, Issue No. 2-22 [Section 2.14.3.1.1]: ***This issue has been resolved.***

Item No. 41, Issue No. 2-23 [Sections 2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12]: ***Issues 41(A), 41(B), 41(D) and 41(E) have been resolved.***

(C) Under what circumstances, if any, should BellSouth be required to install new network terminating wire (UNTW) for the use of the CLEC? (2.16.2.3.2)

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-23(C).

A. To the extent BellSouth would install new or additional UNTW beyond existing UNTW upon request from one of its own End Users, or is otherwise required to do so in order to comply with FCC or Commission rules and orders, BellSouth should be obligated to provide access to such new or additional UNTW beyond existing UNTW. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. UNTW is part of the Loop UNE. Accordingly, the FCC's routine network modification rules require, in addition to those that require BellSouth to extend UNTW to single points of interconnection, BellSouth to modify and extend UNTW to the extent it would do so for its own customers and to the extent otherwise required by FCC rules. BellSouth cannot unilaterally eliminate these requirements with respect to UNTW. In this provision, Petitioners seek nothing more than nondiscriminatory access to UNE Loop facilities — something that BellSouth is required to provide. Therefore Petitioners' language should be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language flatly states that "BellSouth shall not be required to install new or additional NTW beyond existing NTW". The problem with this language is that it omits reference to BellSouth's requirement to provide UNTW to the full extent of the law and it is on its face contrary to law.

BellSouth's position baldly states that it "is not obligated to build a network for CLECs." This BellSouth slogan, however, misses the point. Petitioners have not asked for a new network. We have asked BellSouth to perform Routine Network Modifications and to extend UNTW to the extent necessary to comply with the FCC's rules. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 42, Issue No. 2-24 [Section 2.17.3.5]: ***This issue has been resolved***

Item No. 43, Issue No. 2-25 [Section 2.18.1.4]: Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by a carrier other than BellSouth?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-25.

A. BellSouth should provide CLEC Loop Makeup information on a particular loop upon request by a Petitioner. Such access should not be contingent upon receipt of an LOA from a third party carrier. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners are entitled to obtain information about the physical make-up of loops upon request. BellSouth, as the sole controller of the legacy systems that hold this information,

must provide it to the fullest extent required by law. The law does not require an LOA from third party carriers. If BellSouth withholds loop make-up information on that basis, it will delay, or even preclude, Petitioners' ability to discern which services it can offer to a customer, thus limiting the customer's competitive choice. It will also inhibit Petitioners' ability to compete, as it effectively institutes a policy of one competitor having to ask another for permission to compete for their customers. The Agreement should therefore ensure that Petitioners can obtain Loop Makeup information upon request. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would deny Petitioners Loop Makeup if a carrier other than BellSouth "controls" the loop. More specifically, BellSouth's language would require Petitioners to provide "a Letter of Authorization (LOA) from the voice CLEC (owner) or its authorized agent" prior to receiving any loop information. This proposal is pure mischief. BellSouth does not need an LOA from one competitor in order to provide loop make-up information to another. As I've indicated, this would in effect require CLECs to ask each other for permission to attempt to win-over their customers. Such a regime would obviously be anti-competitive and would likely thwart most attempts to get information needed to make informed service offers to customers.

If customer privacy is BellSouth's true concern, that issue is not addressed in its proposed language. For BellSouth to require an LOA from a CLEC as a means of securing privacy would therefore be misplaced. Because it serves no lawful basis, yet

would impose significant competitive harm, BellSouth's proposed language should be rejected. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 44, Issue No. 2-26 [Section 3.6.5]: ***This issue has been resolved.***

Item No. 45, Issue No. 2-27 [Section 3.10.3]: What should be CLEC's indemnification obligations under a line splitting arrangement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-27.

A. If a Petitioner is purchasing line splitting, and it is not the data provider, the Petitioner is willing to indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs (including reasonable attorney fees) reasonably arising or resulting from the actions taken by the data provider in connection with the line splitting arrangement, except to the extent caused by BellSouth's negligence, gross negligence or willful misconduct. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners are willing to indemnify BellSouth for damages reasonably arising or resulting from the actions taken by the data provider with whom they split a line. Petitioners are not willing, however, to indemnify BellSouth for its own actions. BellSouth has no right to be protected against damages that are caused by BellSouth. Petitioners have therefore excepted damages "caused by BellSouth's negligence, gross negligence or willful misconduct" from this indemnification provision. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth refuses to accept Petitioners' language, and instead seeks indemnification for any problem "which arise out of actions related to the data provider". BellSouth's language is too vague, and its refusal to agree to the clarifying language proposed by Petitioners is unreasonable. BellSouth's refusal to include language that makes clear that the indemnification would not extend to damages caused by BellSouth also is patently unreasonable. It simply is not reasonable to ask Petitioners to serve as an insurance company for BellSouth. Petitioners' ability to engage in line splitting would be seriously and artificially constrained by inclusion of the unusual and unreasonable indemnification language proposed by BellSouth. BellSouth's provision for line splitting indemnification should therefore be rejected. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 46, Issue No. 2-28 [Section 3.10.4]: (A) May BellSouth refuse to provide DSL services to CLEC's customers absent a Commission order establishing a right for it to do so?

(B) Should CLEC be entitled to incorporate into the Agreement, for the term of this Agreement, rates, terms and conditions that are no less favorable in any respect, than the rates terms and conditions that BellSouth has with any third party that would enable CLEC to serve a customer via a UNE loop that may also be used by BellSouth for the provision of DSL services to the same customer?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-28(A).

A. The answer to the question posed in the issue statement is "NO". In cases where a Petitioner purchases UNEs from BellSouth, BellSouth should not be permitted to refuse

to provide DSL transport or DSL services (of any kind) to the Petitioner and its End Users, unless BellSouth has been expressly permitted to do so by the Commission. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth should not be permitted to refuse xDSL transport services to a CLEC or its customers. It is anticompetitive and anti-consumer to block CLEC customers from receiving such DSL services. By doing so, BellSouth is discriminating against Petitioners and artificially preserving its local service base with the threat of denying attractive DSL services to those customers who wish to switch to a CLEC for other services. In addition, denying DSL to CLEC customers is contrary to the public interest, as such conduct in effect "punishes" customers for exercising their right to choose a local service provider. Four state commissions, Georgia, Florida, Kentucky and Louisiana have agreed. Petitioners are not asking the Commission to decide whether BellSouth should be able to tie DSL services to its voice offerings and punish consumers who would like to use other voice providers in this proceeding. Instead, Petitioners are simply asking the Commission to prohibit BellSouth from doing so, until the Commission expressly determines that it is lawful and in the public interest to allow BellSouth to leverage its control over its rate-payer financed network in such a manner.

For these reasons, Petitioners have proposed language stating that "BellSouth shall not refuse to provide DSL transport or DSL services (of any kind) to [a Petitioner]and its End Users unless BellSouth has been expressly permitted to do so by the Commission." *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not provided any alternative language for this provision. Its position has been, however, that only upon an express order by a state commission will it sell DSL service to a CLEC local customer. This position is unreasonable. An entity should not refrain from acting anticompetitively only at the behest of an official. That obligation remains constant. Nor should BellSouth have the power to punish CLEC customers absent a specific Commission order to the contrary, as denying customers the services that they request, if they are technically feasible to provide, is patently unreasonable and contrary to the public interest. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-28(B).

A. The answer to the question posed in the issue statement is "YES". Where BellSouth provides DSL transport/services to a CLEC and its End Users, BellSouth should be required to do the same for Petitioners without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. This position comes out of frustration with BellSouth's failure to provide a proposal with respect to CLEC's request to have contract language that provides them with the same rights any other entity has with respect to such DSL transport/services. This is simply an

anti-discrimination provision. Petitioners have therefore proposed that BellSouth must provide DSL service free of charge, until such time as the Agreement includes terms and conditions for provisioning that are at least as advantageous as those to which BellSouth has already agreed or that are currently in effect. Because BellSouth refuses to negotiate these terms, they must be imposed upon BellSouth. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has refused to provide language and merely suggests that it will some day provide Petitioners with another non-Section 252 agreement to consider. This is unacceptable. Petitioners are not willing to wait until someday and they are not willing to accede to BellSouth's request to address the issue outside the scope of the Commission's jurisdiction. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S ADDITION OF ISSUE 2-28(C)?

A. BellSouth's new Issue 2-28(C) asks whether BellSouth's obligation not to deny DSL service should "be in included in this agreement". Petitioners' response to that question is "YES". Petitioners want those provisions in this Agreement subject to the General Terms and Conditions provisions we have negotiated (and arbitrated). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS ISSUE 2-28 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. BellSouth's assertion that "[t]his issue (including all subparts) is not appropriate in this proceeding" is incorrect. This issue came up repeatedly during negotiations and because it involves the shared use of UNE facilities, it is squarely within the Commission's jurisdiction to arbitrate. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 47, Issue No. 2-29 [Section 4.2.2]: (A) ***This issue has been resolved****; (B)* ***This issue has been resolved.***

Item No. 48, Issue No. 2-30 [Section 4.5.5]: ***This issue has been resolved.***

Item No. 49, Issue No. 2-31 [Section 5.2.4]: ***This issue has been resolved.***

Item No. 50, Issue No. 2-32 [Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5, 5.2.5.2.7]: How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-32.

A. The high capacity EEL eligibility criteria should be consistent with those set forth in the FCC's rules and should use the term "customer", as used in the FCC's rules. The term "customer" should not be defined in a manner that limits Petitioners' access to EELs, as BellSouth proposes. The FCC did not limit its term "customer" to the restrictive definition of End User sought by BellSouth. Use of the term "End User" as defined by BellSouth may result in a deviation from the FCC rules to which CLECs are unwilling to agree. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is simple: Petitioners want what the rule says, not anything else. Petitioners are unwilling to accept more limited access to EELs than which they are entitled to under the FCC's rules. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed replacement of "customer" with "End User" – a term upon which the parties cannot agree on a definition (Item 2 / Issue G-2) improperly seeks to reduce the availability of EELs in a manner not intended by the FCC. In the absence of mutual agreement otherwise, the Commission must find that the express terms of the FCC rule govern. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A) How often, and under what circumstances, should BellSouth be able to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria?

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-33(A).

A. BellSouth may, no more frequently than on an annual basis, and only based upon cause, conduct a limited audit of CLEC's records in order to verify compliance with the high

capacity EEL service eligibility criteria. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In order to ensure BellSouth conducts EEL audits in a reasonable and nondiscriminatory manner that is in all respects in accordance with the TRO, the Agreement must be clear that BellSouth may conduct a limited audit of CLEC's records no more frequently than once a year and only based upon cause. The Petitioners' proposed for-cause standard and the requirement that the audit be of the CLEC's records are taken right from the TRO and will help ensure that BellSouth does not seek an illegitimate audit that unduly imposes costs on CLECs. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language does not state that an audit may only be conducted based upon cause nor does it propose that the audit be of the CLEC's records, as prescribed in the TRO. Notably, since Petitioners' arbitration petition was filed, BellSouth agreed to language with Cbeyond that incorporates these two criteria. It is unclear why BellSouth insists that this be an arbitration issue for some CLECs but not for others. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HOW WILL BELLSOUTH MEET THE FOR-CAUSE STANDARD FOR EEL AUDITS?

A. In order for BellSouth to meet the for-cause standard, BellSouth must identify the particular circuits for which BellSouth alleges non-compliance with the service eligibility

criteria and the cause upon which BellSouth rests its allegations. This is consistent with the circuit-by-circuit approach adopted by the FCC in the TRO. Additionally, BellSouth will provide supporting documentation to the CLECs upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Accumulating this type of information and providing it to the CLECs does not place a significant burden on BellSouth, as all the data necessary is available to BellSouth. In fact, BellSouth should already be doing this type of data collection and analysis before making any type of EEL audit request. The CLECs are simply seeking to making this requirement explicit in the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HAVE YOU EXPERIENCED DIFFICULTY IN GETTING THIS SORT OF INFORMATION FROM BELLSOUTH PREVIOUSLY?

A. Yes. In a Georgia complaint case initiated by BellSouth, it took much prodding by that Commission and more than two years for BellSouth to provide supporting documentation to NuVox upon which, in the opinion of the Georgia Commission, established the cause that formed the basis of BellSouth's allegations of noncompliance. With Petitioners' proposed language, we are simply trying to avoid reliving past resource-draining disputes. *[Sponsored by **1 CLEC**: H. Russell (NVX)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-33(B).

A. The answer to the question posed in the issue statement is "YES" . It is the CLECs' position that to invoke its limited right to audit CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to the CLECs, identifying the particular circuits for which BellSouth

alleges non-compliance and demonstrating the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to the CLECs with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In order for the CLECs to be adequately prepared to respond to a BellSouth EEL audit request, BellSouth should provide the CLECs with proper notification. CLECs are entitled to know the basis for the audit and need sufficient time, i.e., thirty (30) days, to evaluate BellSouth's audit request and to prepare to for an audit. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth does not provide any language on this issue. It is BellSouth's position that the TRO does not require any notice for an EEL audit. Although the TRO does not include a specific notice requirement, this Commission may order a such a requirement. The TRO only includes "basic principles for EEL audits" and should not be construed as a comprehensive overview of all EEL audit requirements. In fact, the FCC specifically stated, "…we set forth basic principles regarding carriers' rights to undertake and defend against audits. However, we recognize that the details surrounding the implementation of these audits may be specific to related provisions of interconnection agreements or to the

facts of a particular audit, and the states are in a better position to address that implementation".

If the CLECs are going to have to endure the time and expense necessary to comply with a BellSouth audit request, at the very least, BellSouth can provide adequate notice to CLECs setting forth the cause of the audit request and supporting documentation. As I discussed earlier in my testimony, such a requirement should place no additional burden on BellSouth, as BellSouth would have to (at least one would hope) accumulate such information before requesting an EEL audit from a CLEC. Moreover, as clearly stated in the FCC's TRO, this Commission is well within its prerogative to order such a notice requirement be included in the Parties' Agreement. Finally, since the Petitioners filed for arbitration, they have become aware that BellSouth's has proposed language to another carrier (Cbeyond) that provides for notice (albeit not with detail proposed the CLEC in that arbitration or by Petitioners in this one). *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-33(C).

A. The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth. The audit should commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the Parties have reached agreement on the auditor. In addition, the audit should be performed in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the high capacity EEL eligibility criteria. The concept of materiality should govern the audit; the

independent auditor's report should conclude whether or the extent to which CLEC complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits should require compliance testing designed by the independent auditor, which typically includes an examination of a sample selected in accordance with the independent auditor's judgment. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Agreement should precisely state who is eligible to conduct an EEL audit and how the audit will be performed. In particular, with regard to the logistics of the audit, the CLECs want to make clear that the audit should commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the Parties have reached agreement on an auditor. This ensures the CLECs will not be bound by BellSouth's choice of an auditor if the CLECs question the independence of BellSouth's selection. In addition, the CLECs will not be required to endure unreasonable expense to travel and transport the records to a location selected by BellSouth. The concept of materiality should govern BellSouth's audit, so that any potential remedy for noncompliance will not outweigh the infraction. Petitioners' proposed language regarding the requirements for independence of the auditor and the concept of materiality come directly from the FCC's TRO.

Given the history of controversy that has surrounded BellSouth's EEL audits, the Petitioners understandably have genuine concerns about the legitimacy of BellSouth's EEL audits. The language proposed by the CLECs, which is consistent with the language of the TRO, should help the CLECs achieve some level of comfort with the BellSouth

EEL audit process, eliminate future EEL audit abuses, and thus, reduce the potential for EEL audit disputes between the Parties. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language is inadequate in that it does not provide that: (1) the Parties must reach agreement on the independent auditor before an audit may commence; and (2) that the audit will commence no sooner than 30 calendar days after the Parties agree on the auditor. BellSouth has provided no persuasive reasons why it cannot agree on the above-mentioned terms.

BellSouth's refusal to accept these provisions is unreasonable. This Commission must establish EEL audit criteria that incorporate the FCC's criteria and ensure reasonable and nondiscriminatory EEL audits. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 52, Issue No. 2-34 [Section 5.2.6.2.3]: Under what circumstances should CLEC be required to reimburse BellSouth for the cost of the independent auditor?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-34.

A. As expressly set forth in the FCC's TRO, in the event the auditor's report concludes that CLEC did not comply in all material respects with the service eligibility criteria, CLEC shall reimburse BellSouth for the cost of the independent auditor. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Our position and proposed language come directly from the TRO. In the TRO, the FCC set-up a symmetrical all-or-nothing cost shifting scheme designed to address flagrant abuses by either side. Indeed, it is clear that the FCC did not envision money changing hands other than in the most egregious cases of abuse by either an ILEC or a CLEC. Specifically, the FCC states "to the extent the independent auditor's report concluded that the competitive LEC failed to comply in **all** material respects with the service eligibility criteria, the competitive LEC must reimburse the Incumbent LEC for the cost of the independent auditor." I emphasize the word "all" because it is clear that the FCC did not choose the word "any", as BellSouth previously insisted, but has since dropped. The flip-side of that provision is the FCC's determination that "to the extent the independent auditor's report concludes that the requesting carrier complied in **all** material respects with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit." Here, too, I have emphasized the use of the word "all" because it matches the previous provision. Thus, in cases of "no compliance", the CLEC is penalized by having to reimburse BellSouth; in cases of "full compliance", BellSouth is penalized by having to reimburse the CLEC. This approach is consistent with the FCC's stated views that EEL audits should not be routine and should occur only in the limited circumstances. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language is inadequate because, while it accepts the stringent "all" standard with respect to those instances where it will be required to reimburse CLECs for their costs associated with an EEL audit, it refuses to accept the flip-side, mirroring language prescribed by the FCC regarding those instances in which BellSouth will have to reimburse the audited CLEC for its costs associated with the EEL audit. When it comes to the standard for when a CLEC must reimburse BellSouth, BellSouth writes-out the word "all", and it clearly expects reimbursement in cases other than those in which a CLEC fails to comply "in all material respects". That change is neither fair nor consistent with what the FCC prescribed. Given BellSouth's history of mischief in this area, Petitioners will not voluntarily agree to BellSouth's lopsided reimbursement standard. Moreover, Petitioners shouldn't have to. Since filing their Petition, Petitioners have learned that BellSouth recently agreed to the exact language proposed by Petitioners with another CLEC (Cbeyond). Thus, Petitioner's proposed language (agreed to by BellSouth with another CLEC) should be adopted. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 53, Issue No. 2-35 [Section 6.1.1]: ***This issue has been resolved.***

Item No. 54, Issue No. 2-36 [Section 6.1.1.1]: ***This issue has been resolved.***

Item No. 55, Issue No. 2-37 [Section 6.4.2]: What terms should govern CLEC access to test and splice Dark Fiber Transport?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-37.

A. CLEC should be able to splice and test Dark Fiber Transport obtained from BellSouth at any technically feasible point, using CLEC or CLEC-designated personnel. BellSouth must provide appropriate interfaces to allow splicing and testing of Dark Fiber. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners seek to ensure that BellSouth provides access to test and splice dark fiber in a manner consistent with the FCC's rules. In addition to requiring that BellSouth provide CLECs with technical information necessary to achieve access to UNEs, the FCC's rules require that BellSouth provide nondiscriminatory access to the dark fiber transport UNE at any technically feasible point, including access for purposes of conducting splicing and testing activities. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language impermissibly limits CLEC access to the dark fiber transport UNE to only those interfaces that BellSouth, in its sole discretion, deems appropriate. Moreover, such access is limited to testing purposes only. Such a limitation is flatly inconsistent with the FCC's rules, which require non-discriminatory access to UNEs at any technically feasible point. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. HAVE THE PARTIES MADE PROGRESS TOWARD SETTLING THIS ISSUE?

A. Yes. This progress has been based on the agreed-upon concept that BellSouth will provision, maintain and repair dark fiber just as it does any other UNE. What appears to

separate us still is a lack of agreement on the standard that dark fiber must meet – which needs to be known so that a "trouble" can be discerned, reported and repaired. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 56, Issue No. 2-38 [Sections 7.2, 7.3]: Should BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-38.

A. The answer to the question posed in the issue statement is "NO". BellSouth's Section 251(c)(2) obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates should not be limited to circumstances in which BellSouth is required to provide, and is providing to CLECs, unbundled access to Local Circuit Switching. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The language of the Petitioners acknowledges that in the TRO the FCC relieved BellSouth of its obligation to provide unbundled access to SS7 signaling on an unbundled basis pursuant to Section 251(c)(3). However, the FCC's rules maintain the requirement that BellSouth provide SS7 interconnection to the Petitioners at TELRIC based rates. Under Section 251(c)(2) BellSouth still has an obligation to interconnect and to provide such interconnection (including signaling link transport for interconnection purposes) at cost-based rates, regardless of the elimination of the obligation to unbundle signaling itself. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is based on a misreading of the FCC's rules as they relate to its obligation to provide cost-based interconnection to the SS7 network. Under BellSouth's interpretation of the rules, the limitation on BellSouth's obligation to provide SS7 signaling as a UNE also obviated the requirement that BellSouth provide TELRIC based interconnection to the SS7 network. This interpretation is incorrect. The FCC's rules preserved BellSouth's obligation to provide TELRIC compliant rates for interconnection under Sections 251(a) and 251(c)(2) of the Act. In light of the fact that SS7 interconnection is a component of Section 251(c)(2) interconnection, the obligation to apply cost-based rates to such interconnection continues to apply to BellSouth. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. IS THE LANGUAGE PROPOSED BY BELLSOUTH APPROPRIATELY INCLUDED IN ATTACHMENT 2?

A. Based on the structure of the Agreement (dictated by BellSouth), interconnection is a topic dealt with in Attachment 3. In that Attachment, it is my understanding that the Parties already have agreed on rates, terms and conditions applicable to interconnection (including trunks and facilities) for their SS7 networks. Indeed, it is my understanding that at a recent Kentucky Commission informal conference regarding this arbitration, BellSouth's interconnection contract negotiator indicated that she agreed that the issue was not an Attachment 2 issue. If that is the case, the Parties should be able to resolve this issue by adopting Petitioners' proposed language. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 57, Issue No. 2-39 [Sections 7.4]: (A) Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider?

(B) If so, which party should bear the cost?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-39(A).

A. The answer to the question posed in the issue statement is "YES". The Parties should be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider. *[Sponsored by: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is one of competitive necessity. If BellSouth refuses to perform CNAM queries and to pass such information on CLEC originated traffic to be terminated to its own customers, then CLECs will be placed at an unfair competitive advantage because its customers will not have his/her/its caller ID appear when a BellSouth customer subscribes to that service. When caller ID does not appear, the party receiving the call is much less likely to answer the call. This may scare customers away from CLECs and back to BellSouth. Because BellSouth would be able to do this only as a result of its monopoly legacy and overwhelming market dominance, the Commission should find that requiring BellSouth to query and pass CNAM information – even if that requires BellSouth to query a competitive database provider is in the public interest. Without such a ruling CLECs would be faced with a Hobson's choice of having to choose between competitive CNAM providers that the largest LEC (BellSouth) refuses to dip or the (non-UNE) CNAM service provided by BellSouth. BellSouth should not be

permitted to free itself of the CNAM unbundling obligation based on the presence of competitive alternatives only to then engage in behavior that makes those alternatives false choices and forces CLECs back to BellSouth for non-UNE CNAM. Accordingly, the Commission should adopt CLECs' proposed language. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it does not oblige BellSouth to query another CNAM database provider and thus threatens to put CLECs at a significant competitive disadvantage. It is our understanding that BellSouth has dipping agreements with the third party providers we seek to use. We are simply trying to ensure that our reliance on such providers is not compromised by BellSouth in a manner that effectively forces us to consider switching to a non-UNE BellSouth service. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-39(B).

A. Each Party should bear its own costs associated with dipping CNAM providers. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is based on fairness and sound public policy. It would be unfair to have a CLEC pay for its own database dips and those of BellSouth. Moreover, since BellSouth no longer has an obligation to provide a CNAM database as a UNE (in cases where unbundled local switching is not used), the Commission should not permit BellSouth to engage in conduct that makes use of third party CNAM providers

undesirable. *[Sponsored by **3 CLECs:** R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS ISSUE 2-39 APPROPRIATE FOR ARBITRATION?

A. In its position statement, BellSouth asserts that this issue, and its subparts, are not "appropriate for this proceeding" because they "involve[] a request … that is not encompassed within BellSouth's obligations pursuant to Section 251." This position is incorrect. As explained above, the exchange of such information is essential to fair competition and the exchange of traffic contemplated by Section 251's interconnection obligations. By virtue of even the language BellSouth has offered, it is clear that CNAM queries and delivery are essential to the exchange of local traffic between interconnecting LECs required under Section 251. Moreover, unless Petitioners' proposed language is adopted, they will once again be impaired without unbundled access to BellSouth's CNAM database. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 58, Issue No. 2-40 [Sections 9.3.5]: Should LIDB charges be subject to application of jurisdictional factors?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-40.

A. The answer to the question posed in the issue statement is "NO". LIDB charges should not be subject to application of jurisdictional factors. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. LIDB should be billed at TELRIC-compliant rates. We have never had a factors provision such as this in our agreement and do not believe that one should be employed

for the purpose of billing higher tariffed rates for a certain percentage of traffic. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it is unnecessary. All LIDB usage should be billed at what BellSouth calls the "local rates". *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 59, Issue No. 2-41 [Sections 14.1]: ***This issue has been resolved.***

INTERCONNECTION (ATTACHMENT 3)

Item No. 60, Issue No. 3-1 [Section 3.3.4 (KMC, NSC, NVX), 3.3.3 XSP]: ***This issue has been resolved.***

Item No. 61, Issue No. 3-2 [Section 9.6 and 9.7]:
(A) What is the definition of a global outage?
(B) Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report?
(C)(1) What target interval should apply for the delivery of such reports?
(C) (2) What target interval should apply for reports related to global outages?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-2(A).

A. Global outages should include outages that impact an entire market or all traffic between two carriers or an entire trunk group. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The definition of global outages must be comprehensive enough to encompass those outages that significantly affect a CLEC's business. Any outage that impacts an entire market, all traffic between two carriers or an entire trunk group is drastic enough to significantly harm a CLEC's business on a large scale. By including these types of outages as global outages, we expect to be able to obtain root cause analyses for these types of outages. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's definition of a global outage is inadequate in that the definition is limited to an entire trunk group outage. There are, as indicated previously, other types of outages that we would categorize as global outages. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-2(B).

A. The answer to the question posed in the issue statement is "YES." Upon request, BellSouth should provide a written root cause analysis report for all global outages, and for any trunk group outage that has occurred three (3) or more times in a 60 day period. *[Sponsored by **3 CLECs:** M. Johnson (KMC), J. Fury (NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for our position is that we want to know what went wrong, how it was fixed and what steps BellSouth plans to take to ensure that service affecting issues are not repeated. Such information will help us understand and respond more efficiently to future outages. It also may help our own efforts to convey information to our customers who have a right to know that we are working cooperatively with our vendors to ensure that they get reliable service. Neither we nor they like to be left in the dark. So that we are not left in the dark, we have requested root cause analyses for what we consider to be serious outages – global outages and for any trunk group outage that has occurred 3 or more times in a 60-day period. Notably, the Parties agreed that such reports should be provided for "global outages" – although it is now clear that we don't agree with respect to what constitutes a global outage. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. HAVE YOU EVER EXPERIENCED A "GLOBAL OUTAGE" INVOLVING AN ENTIRE TRUNK GROUP?

A. Yes. *[Sponsored by 3 **CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. HAVE YOU EVER EXPERIENCED A "GLOBAL OUTAGE" INVOLVING AN ENTIRE MARKET?

A. Yes. Typically these result from switch translation and/or NPAC errors. In our experience the exposure is greatest during NPA splits/overlays. *[Sponsored by **2 CLECs**: M. Johnson (KMC), J. Fury (NVX)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it only commits BellSouth to prepare a written root cause analysis report for global outages, as defined by BellSouth. It is BellSouth's position that ***no reports*** should be required other than for global outages. It is simply not clear why BellSouth refuses to meet Petitioners' request for a root cause analysis on any trunk group outage that has occurred 3 or more times in a 60-day period. BellSouth's refusal to prepare such reports for trunk group outages is unjustified. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUES 3-2(C)(1) and (C)(2).

A. BellSouth should use best efforts to provide global outage and trunk group outage root cause analysis reports within five (5) business days of request. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. It is important to learn as much as possible about outages as quickly as possible, so that recurrences can be avoided or at least detected and reported as quickly as possible. All this is essential to providing good customer service and is necessary so that carriers can have the best information upon which they can advise customers as to problems, the steps taken to repair them and avoid their recurrence in the future. Petitioners believe it is reasonable for BellSouth to use its best efforts to provide such report within five (5) business days of the CLECs' request. The CLECs recognize that there may be various reasons for a service outage and that in some instances it will be more difficult for BellSouth to determine the root cause than others. Therefore, the CLECs propose a "best effort" standard which will provide BellSouth longer than five (5) business days in those

cases where the root cause analysis report is more difficult to prepare. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language is inadequate in that it provides a target interval that is simply too long. If we want to be responsive to customer demands regarding such service-impacting outages, we need to get a root cause analysis report reasonably quickly. That is why we have proposed a target interval of 5 business days. This interval, which is not a "hard interval", should allow us to get back to customers with a timely explanation. If BellSouth's proposed 30-day interval is adopted (its language says 30 days; its position says 10-30 days, both making 30 days acceptable) it will put us in the position of appearing non-responsive and will allow us little more than an opportunity to remind customers of the service outage at a point where we would hope to have moved well beyond it. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 62, Issue No. 3-3 [Section 10.7.4, 10.9.5, and 10.12.4]: What provisions should apply regarding failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-3.

A. In the event that either Party fails to provide accurate and detailed switched access usage data to the other Party within 90 days after the recording date and the receiving Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the Party failing to send the specified data should

be liable to the other Party in an amount equal to the unbillable or uncollectible revenues. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Parties must have accurate switched detail usage data within a reasonable timeframe in order to bill their respective customers. Without such data, the Parties will either be unable to bill their customers or will bill inaccurately, and likely not collect all the revenue from their customers. Therefore, the CLECs propose that if a Party does not provide the accurate switched access data within 90 days after the recording date, and this causes the receiving Party to be unable to bill or collect from its customers, the Party failing to send the data should be liable for any unbillable or uncollectible revenue. Ninety days from the recording date is more than ample time for the Party to provide accurate switched detail usage data. Moreover, the CLECs' proposal is consistent with their 90-day backbilling proposal addressed in Issue No. 7-1, Section 1.1.3 of Attachment 7 (Billing). As discussed in more detail in Issue No. 7-1, the CLECs cannot reasonably backbill their customers more than 90 days and, therefore, to the extent BellSouth does not provide the CLECs accurate switched access usage data within 90-days, BellSouth should be liable to the CLECs for the unbilled and/or uncollected revenue. Furthermore, the Commission should be reminded that this provision is reciprocal and the CLECs are willing to adhere to the same standard if they are unable to provide such data to BellSouth within 90-days as well. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth recently provided revised language which adopts the 90 day interval, but carves-out an exception that is ambiguous and broad. The Parties are working toward tightening the exception proposed by BellSouth so that it is agreeable to the Petitioners. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 63, Issue No. 3-4 [Section 10.8.6, 10.10.6 and, 10.13.5]: Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-4.

A. In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is contractually obligated to pay. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners have agreed to reimburse BellSouth for termination charges that BellSouth must pay third party carriers that terminate CLEC-originated traffic transited by BellSouth. The Agreement, however, must be clear that such reimbursement is limited to those charges BellSouth is contractually-obligated to pay to third party carriers. Without such a limitation, there is the potential that BellSouth will pay third parties without

carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLECs, for unjustified termination charges. In order to further ensure that BellSouth does not overpay and CLECs are not over-reimbursing for third-party termination of CLEC-originated/BellSouth transited traffic, BellSouth should be required to diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices. We feel that such language is needed because, without it, there is the incentive for BellSouth to become lax, as it can relay on the reimbursement provision. Accordingly, we simply ask BellSouth to treat bills for termination of Transit Traffic no differently from other bills the company gets from independent telcos and the like. The CLECs' proposal will eliminate any potential discrimination and promote business certainty with regard to BellSouth's transiting function. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate in that it does not limit the reimbursement obligation to those charges BellSouth is contractually obligated to pay third parties terminating CLEC-originated/BellSouth-transited traffic. Instead, it gives BellSouth the latitude to choose to pay such third parties even when it has no contractual obligation to do so. The result would leave CLECs vulnerable to whatever political or business arrangements BellSouth struck with such third parties regardless of whether the rate imposed is unjust and unreasonable. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 64, Issue No. 3-5 [Section 10.5.5.2, 10.5.6.2, 10.7.4.2 and 10.10.6]: While a dispute over jurisdictional factors is pending, what factors should apply in the interim?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-5.

A. While a dispute over jurisdictional factors is pending, factors reported by the originating Party should remain in place, unless the Parties mutually agree otherwise. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale here is that a change is not proper until the preferred method agreed upon by the Parties is proven broken. The Parties have agreed that billing will be based on factors reported by the originating party. Thus, it is logical that while a dispute is pending as to the jurisdictional factors, the factors reported by the originating Party should remain in effect. Those factors are presumptively valid until replaced by the reporting party, by agreement of the parties, by way of an audit, or through dispute resolution. In the case of disputes, the audit provision provides for the replacement of an erroneously reported factor for the prior quarter. Until such an audit proves an erroneous report, the reported factor should remain in place. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX) , J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth language would give it the right to replace CLEC reported factors any time it saw fit. There is a methodology to which the Parties have agreed that applies to the calculation of factors by the originating Party; by contrast, while it is unclear what constraints, if any would apply to the terminating Party's efforts to replace those factors.

Because factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison. Thus, it is far more logical to leave the originating Party's factors in place, if a dispute arises. The audit provisions provide a sound process for addressing such disputes and make clear the point at which factor replacement should take effect in the event that a reporting error is proven. *[Sponsored by **3 CLEC**s: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 65, Issue No. 3-6 [Section 10.8.1, 10.10. 1, and 10.13]: Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-6.

A. The answer to the question posed, in the issue statement is "NO". BellSouth should not be permitted to impose upon CLECs a Tandem Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth's market power and is discriminatory. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX) , J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. KMC and NewSouth's reasoning for refusing to agree to BellSouth's proposed TIC is threefold. First, BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power. Only BellSouth is in the position of providing transit service capable of connecting all carriers big and small. BellSouth is in this

position because of its monopoly legacy and continuing market dominance. To ensure connectivity necessary to allow South Carolina consumers to choose among carriers big or small, it is essential that this means of interconnection among parties be preserved and not jeopardized by the imposition of non-cost-based rates.

Second, the rate BellSouth seeks to impose – appropriately called the TIC (like its insect namesake, this charge is parasitic and debilitating) – appears to be purely "additive". The Commission has never established a TELRIC-based rate for it. BellSouth already collects elemental rates for tandem switching and common transport to recover its costs associated with providing the transiting functionality. These elemental rates are TELRIC-compliant which, by definition, means that they not only provide BellSouth with cost recovery but they also provide BellSouth with a reasonable profit. BellSouth has recently developed the TIC simply to extract additional profits over-and-above profit already received through the elemental rates.

Third, BellSouth's attempted imposition of the TIC charge on the CLECs is discriminatory. BellSouth does not charge TIC on all CLECs and it appears that, even when it does, it can set the rate at whatever level it desires. Although, the TIC proposed by BellSouth in the filed rate sheet exhibits to Attachment 3 is $0.0015, BellSouth had threatened to nearly double that rate, if Petitioners did not agree to it during negotiations. For these reasons, the Commission must find that the TIC charge is unlawfully discriminatory and unreasonable. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX) , J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language provides for recovery of the TIC. It is BellSouth's position that the proposed rate is justified because BellSouth incurs costs beyond those for which the Commission-ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth, however, has not demonstrated that the elemental rates that have applied for nearly eight (8) years to BellSouth's transiting function do not adequately provide for BellSouth cost recovery. If these rates no longer provide for adequate cost recovery, BellSouth should conduct a TELRIC cost study and propose a rate in the Commission's next generic pricing proceeding. BellSouth should not be permitted unilaterally to impose a new charge without submitting such charge to the Commission for review and approval. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX) , J. Falvey (XSP)]*

Q. WHY IS ISSUE 3-6 APPROPRIATE FOR ARBITRATION?

A. BellSouth's position statement states that Issue 3-6 should not be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in Section 251 of the 1996 Act. This statement is incorrect. Transiting is an interconnection issue firmly ensconced in Section 251 of the Act. Moreover, this functionality has been included in BellSouth interconnection agreements for nearly 8 years – it is not now magically not related to its obligations under Section 251 of the Act. In addition, transiting functionality is something BellSouth offers in Attachment 3 of the Agreement, which sets forth the terms and conditions of BellSouth's obligations to interconnect with CLECs pursuant to section 251(c) of Act. Finally, the Parties have

discussed and debated the TIC, although to no resolution, throughout the negotiations of this Agreement. For these reasons, Issue 3-6 is properly before this Commission. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 66, Issue No. 3-7 [Section 10.1]: ***This issue has been resolved.***

Item No. 67, Issue No. 3-8 [Section 10.2, 10.2.1, 10.3]: Should compensation for the transport and termination of ISP-bound Traffic be subject to a cap?[8]

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-8.

A. The answer to the question posed in the issue statement is "NO". Compensation caps set in the FCC's remanded ISP Order on Remand do not extend beyond 2003. However, to the extent that CLECs have negotiated a compensation cap for ISP-Bound Traffic, the issue then becomes how such caps will be combined in the event of a merger or asset acquisition. Xspedius' position is that in the event of a merger or asset acquisition, such compensation caps should be combined and should accrue to the combined entity. In the event that one entity is not subject to a compensation cap, the Parties should negotiate with respect to what compensation cap, if any, will apply to the new entity. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. To the extent that CLECs have negotiated a compensation cap for ISP-Bound Traffic, it is fair that such caps will be combined upon merger or asset acquisition. To the extent

[8] KMC and NuVox are not arbitrating this issue.

that a CLEC has not negotiated such a cap, it would be unfair to subject an enlarged CLEC entity (enlarged via merger or asset acquisition) to a cap negotiated with respect to a smaller entity, especially since the FCC currently provides for no compensation cap. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The Parties have recently exchanged redlined language on this issue, which will hopefully resolve any inadequacies in the proposed language. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Item No. 68, Issue No. 3-9 [Section 2.1.12]: ***This issue has been resolved.***

Item No. 69, Issue No. 3-10 [Section 3.2, Ex. A]: ***This issue has been resolved***

Item No. 70, Issue No. 3-11 [Sections 3.3.1, 3.3.2, 3.4.5, 10.10.2]: ***This issue has been resolved.***

Item No. 71, Issue No. 3-12 [Section 4.5]: ***This issue has been resolved.***

Item No. 72, Issue No. 3-13 [Section 4.6]: ***This issue has been resolved.***

Item No. 73, Issue No. 3-14 [Sections 10.10.4, 10.10.5, 10.10.6,10.10.7]: Under what conditions should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?[9]

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-14.

A. Where a CLEC has message recording technology that identifies the jurisdiction of traffic terminated as defined in the Agreement, CLEC should have the option of using that information to bill BellSouth based upon actual measurements and jurisdictionalization, in lieu of factors reported by BellSouth. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. There is no reason why a CLEC, which employs its own message recording technology that identifies the jurisdiction of terminated traffic cannot utilize its technology to bill BellSouth based on the actual measurements and jurisdictionalization instead of BellSouth's factors. BellSouth's factors are designed as a default in cases where a Party does not have traffic recording technology. However, in the instance that a CLEC does have recording technology, there is no reason why the Parties cannot use the CLEC's actual measurements in lieu of BellSouth's default factors. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

[9] KMC and NuVox are not arbitrating this issue.

A. BellSouth's language does not provide Xspedius with the option of billing based on actual traffic measurements. BellSouth's position statement indicates that it is willing to agree that Xspedius can bill based on actual traffic measurements, but BellSouth has not presented contract language that would flesh-out this proposal. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

COLLOCATION (ATTACHMENT 4)

Item No. 74, Issue No. 4-1 [Section 3.9]: What definition of "Cross Connect" should be included in the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-1(A).

A. The following definition of "Cross Connect" should be included in the Agreement: "A cross-connection (Cross Connect) is a cabling scheme between cabling runs, subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end, as defined and described by the FCC in its applicable rules and orders." *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' proposed definition of Cross Connect is a verbatim restatement of the FCC's definition of this facility. Petitioners have requested no more than the facilities to which they are entitled. This language is necessary because Petitioners' need to ensure that once they have collocated in a BellSouth premise, they can use Cross Connects to gain access to loops, transport, multiplexers, switch ports, optical terminations and the like. Without such access, the purpose of collocating is moot. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language that is overly narrow and thus restricts Petitioners' access to Cross Connects. BellSouth limits its definition of Cross Connect to "a jumper on a frame … or panel" and, if necessary, the "tie cable connecting the frame/panel with the collocation demarc[.]" This definition does not comport with the FCC's definition, which includes "a cabling scheme between cabling runs [or] subsystems" and equipment. In practice, it could prevent a CLEC from connecting its collocated equipment to loops, transport, multiplexers, switch ports, optical terminations and the like. Under BellSouth's language, Petitioners fear that they would be forced to obtain this connectivity by purchasing "cabling" at unknown rates or by purchasing expensive "local channels," which essentially would be cross connects priced at access rates on a minute-of-use basis. Thus, by artificially limiting the definition of Cross Connect, CLECs fear that BellSouth is planning a windfall at the CLECs' expense. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 75, Issue No. 4-2 [Sections 5.21.1, 5.21.2]: In circumstances not covered by the scope of the FCC Rule 51.233 (which relates to Advanced Services equipment) what restrictions should apply to the CLEC's use of collocation space or collocated equipment/facilities when such use impacts others?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-2.

A. Provisions should be included to cover the installation and operation of any equipment or services that (1) significantly degrades ("significantly degrades" is as in the FCC rule applicable to Advanced Services); (2) endangers or damages the equipment or facilities

of any other telecommunications carrier collocated in the Premises; or (3) knowingly and unlawfully compromises the privacy of communications routed through the Premises; and (4) creates an unreasonable risk of injury or death to any individual or to the public.

The Agreement also should provide that if BellSouth reasonably determines that any equipment or facilities of a Petitioner violates the provisions of Section 5.21, BellSouth should provide written notice to the Petitioner requesting that the Petitioner cure the violation within forty-eight (48) hours of actual receipt of written notice or, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter.

The Agreement also should state that, with the exception of instances which pose an immediate and substantial threat of physical damage to property or injury or death to any person, disputes regarding the source of the risk, impairment, interference, or degradation should be resolved pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. This issue is of great importance to Petitioners, as the Agreement provisions that it addresses give BellSouth the right to terminate Petitioners' service. They are "pull the plug" provisions. Because of the enormous competitive and customer service implications of these provisions, their terms should be as precise and definite as possible in order to prevent unwarranted service disruption.

Petitioners' proposed language provides BellSouth full protection for occurrences of interference or impairment that would affect service in a material way or would endanger the privacy or safety of any person. It protects against four types of harm. The first type, drawn in large part from the FCC's interference rules, protects BellSouth and other collocated carriers from interference that "significantly degrades" — defined as "noticeably impairing a service from a user's perspective" — their equipment or service. Allegations of this sort of impairment should be supported by customer complaints or trouble tickets. As to the second type of harm, Petitioners' language guards against any action or occurrence that "endangers or damages the equipment of BellSouth or any other telecommunications carrier," thus protecting the integrity of all operations located within and service provided via the BellSouth premise in which Petitioner is collocated. Third, Petitioners' language states that any knowing or unlawful compromising of a customer's privacy of communications will be covered. This language will ensure that Petitioners take all reasonable steps to ensure that their equipment and technicians preserve customer privacy. Finally, Petitioners have proposed language that states that their equipment and services shall not impose an "unreasonable risk or injury or death" to any person.

In the event that interference rises to a level in which it poses "an immediate and substantial threat of physical damage to property or injury or death to any person," BellSouth may take whatever action necessary to prevent such injury, including the termination of power to Petitioners' equipment, provided that BellSouth has determined beyond a reasonable doubt that Petitioner's equipment is the cause of such a dire threat. Where possible, BellSouth must provide Petitioners with notice of such action. Petitioners' language thus ensures a proportional response to interference, and prevents

BellSouth from terminating service arbitrarily or for minor infractions. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth also has proposed a four-part interference provision, and it concurs with Petitioner's language regarding an "unreasonable risk of injury or death." In other respects, however, BellSouth has proposed language that is too vague or overly broad, such that it would be entitled to terminate Petitioners' services in response to minor interference. First, in addition to Petitioners' "significantly degrades" language (BellSouth concurs that this term is defined as "noticeably impairing a service from a user's perspective"), BellSouth has added that anything that "interferes with or impairs" service will be deemed actionable interference. This language provides no objective standard for defining which interference justifies service termination. Accordingly, it improperly renders BellSouth the arbiter, without limitation, as to what problems warrant termination. Second, BellSouth proposes to expand the provision to include "equipment, facilities, or any other property of BellSouth or of any other entity or person" (emphasis added). This language is inappropriate, because it imposes the risk of service termination even when the alleged interference does not impact any telecommunications carrier's actual operations or service. Under this language, a spilled can of soda in an end office common area could result in service termination. Third, BellSouth seeks to hold Petitioners accountable for any compromise of customer privacy, regardless of whether the breach was knowing or unlawful. In effect, this provision creates strict liability on

Petitioners for any breach of customer privacy, a result that is neither commercially reasonable nor in keeping with federal law.

In addition, BellSouth proposes a significantly different standard for service termination. If interference poses a threat of "any other significant degradation, interference or impairment of BellSouth's or another entity's service," then it may terminate Petitioners' electrical power. This language, coupled with BellSouth's overly broad definitions of what constitutes interference, gives BellSouth far too much latitude in determining whether to terminate power. Not every instance of interference or impairment warrants interrupting a customer's service. Thus, because of the gravity of the provisions at issue, which empower BellSouth to termination service by interrupting power, the language defining what constitutes interference or impairment must be precise, with an objective standard, and not open to interpretation. More importantly, these provisions must provide for a proportional response to interference, such that Petitioners' services are not terminated for minor interference that is not significantly service-affecting. Customer service must be safeguarded; BellSouth's ability to interrupt service must be closely and fairly defined. To do otherwise would be patently unreasonable as a matter of contract, but also contrary to what we perceive to be the public interest. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 76, Issue No. 4-3 [Section 8.1, 8.6]: To the extent the CLECs paid for space preparation and power on a non-recurring basis, how should those payments be accounted for in light of the current collocation rate structure?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-3.

A. When a CLEC previously has paid for space preparation and power on a non-recurring basis, that CLEC should not have to pay rates established under the current rate structure which folds these formerly non-recurring charge elements into monthly recurring charges. The rates that should apply to those collocations provisioned under the old rate structure should be those rates that were in effect prior to the Effective Date of the Agreement, unless such rates included recovery for space preparation and power already paid for by a CLEC via non-recurring charges of one form or another. In that case, the Commission should derive a TELRIC compliant rate that does not include recovery for space preparation and power infrastructure. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The core dispute in this issue (and related Issue 4-5) surrounds Petitioners' unwillingness to double-pay for certain collocation charges. Petitioners' proposed language states that collocation rates should be grandfathered — charged at rates that were in effect prior to this Agreement — "unless application of such rates would be inconsistent with the underlying purpose for grandfathering." That is, Petitioners will pay grandfathered rates unless doing so in effect forces them to double-pay for collocation power and space preparation in the form of previously paid Individual Case Basis ("ICB") pricing or non-recurring charges and ongoing recurring charges that incorporate recovery for things Petitioners already had paid for. This result would be "inconsistent" with the concept of grandfathering, because it would give BellSouth a windfall in terms of double-recovering space preparation rates — the opposite of what grandfathering is designed to do. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language omits Petitioners' caveat regarding inappropriate grandfathering of rates. Thus, BellSouth appears unwilling to ensure that Petitioners do not pay twice for space preparation, first through non-recurring or ICB up-front payments and then through recurring charges designed to cover space preparation costs. This position is unreasonable, as it raises Petitioners' costs needlessly and without justification. Accordingly, this provision should state that grandfathered rates shall apply unless that result in inconsistent with the purpose of grandfathering. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 77, Issue No. 4-4 [Section 8.4]: When should BellSouth commence billing of recurring charges for power?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-4.

A. Billing for recurring charges for power provided by BellSouth should commence on the date upon which the primary and redundant connections from the Petitioner's equipment in the Collocation Space to the BellSouth power board or Battery Distribution Fuse Bays ("BDFB") are installed. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners should not pay for power that they are not in a position to use. Billing for power should therefore commence after the requisite power cabling is installed (*i.e.,* when leads are tied down to a fuse panel or BDFB); prior to that time, Petitioners could not access BellSouth's power supply. To bill prior to that time is nothing more than

taking Petitioners' money for no services rendered. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position is that billing for power provided by BellSouth should commence on the Space Acceptance Date or the Space Ready Date if a Space Acceptance inspection does not occur within 15 calendar days of the Space Ready Date. Under this language, Petitioners would be paying for power without even being connected to the BellSouth power infrastructure. The Petitioners would merely be present in the office; their equipment could not run or consume power. There is no reasonable basis for BellSouth to assert that it is owed money in this situation, as it is not being charged by the power company for power that has not been drawn. BellSouth's language should therefore be rejected. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 78, Issue No. 4-5 [Section 8.6]: ***This issue has been resolved.***

Item No. 79, Issue No. 4-6 [Sections 8.11, 8.11.1, 8.12.2]: What rates should apply for BellSouth-supplied DC power?

Q: PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-6.

A. Applicable rates should vary depending on whether the Petitioner elects to be billed on a "fused amp" basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method, or on a "used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the power usage

metering option set forth in Section 9 of Attachment 4. Under either billing method, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement, and there will be rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges, as currently set by the Commission.

Under the fused amp billing option, the Petitioner will be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if certain arrangements are grandfathered as a result of the Petitioner having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, the Petitioner should only be billed the recurring rate for the DC power in effect prior to the Effective Date of this Agreement, or, if rates that excluded the infrastructure component had not been incorporated into the Parties' most recent Agreement, the most recent Commission approved rate that does not include an infrastructure component should apply.

Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if certain arrangements are grandfathered as a result of the Petitioner having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, the Petitioner should only be billed a recurring rate for the AC usage based on the most recent Commission approved rate

exclusive of an infrastructure component (as set by the Commission). *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' position remains that they should pay grandfathered rates when appropriate and that they should have the option of paying only for the power they use. And as explained in Issue 4-8, Petitioners should be permitted to chose the method of billing — on either a "fused amp" or a "used amp" basis — in any BellSouth state. (Although this has been ordered in Tennessee, Florida and Georgia, BellSouth currently refuses to make the option available outside Tennessee.) Under either method, where Petitioners have already paid non-recurring charges for the power infrastructure they require, such payments must be credited in some way to prevent double-dipping by BellSouth. Thus, in the event that a Commission's rates have changed to include infrastructure costs within the monthly recurring power rate, Petitioners should pay grandfathered monthly rates that do not include this component. Petitioners' proposed language therefore states that if they have "paid installation costs under a ICB or nonrecurring rate schedule for the collocation arrangement power installation … the most recent Commission approved rate that does not include an infrastructure component shall apply." *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inappropriate because it requires Petitioners to pay "the rates contained in Exhibit B of this Attachment", regardless of whether grandfathering is appropriate and irrespective of whether a fused or used billing option is chosen. In other

words, BellSouth wishes to require Petitioners to pay twice for power infrastructure work already completed, once via ICB NRCs and again through recurring monthly rates. According to BellSouth's position statement, the only exception that BellSouth provides to the "fused amp" billing method is for Tennessee, presumably because that commission already ordered BellSouth to provide used amp billing.

As is the case with collocation build-out charges (Issue 4-5), such a practice is unreasonable and anticompetitive. BellSouth's proposed terms would improperly raise Petitioners' costs and result in a rate windfall. They are not acceptable in any state, regardless of whether, like Tennessee, the state commission has affirmatively ordered used amp billing. Petitioners' language should therefore be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 80, Issue No. 4-7 [Section 9.1.1]: (A) Under the fused amp billing option, how should recurring and non-recurring charges be applied? (B) What should the charges be?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-7 (A).

A. Under the fused amp billing option, monthly recurring charges for -48V DC power should be assessed per fused amp per month in a manner consistent with Commission orders and as set forth in Section 8 of Attachment 4 (see Issue 4-6 above). It is our understanding that non-recurring charges for –48V DC power distribution, are not applicable and therefore, subject to agreement on appropriate language to reflect this, this aspect of the issue appears to be settled. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners simply want rates applied in the manner intended by the Commission. Petitioners do not want the Commission's rates applied in a manner that results in overpayment by CLECs and over-recovery by BellSouth. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is unacceptable because Petitioners do not feel comfortable that they understand it. Petitioners have a pending request into BellSouth for a conference call with a BellSouth collocation expert who can explain the meaning of BellSouth's proposed language, how it applies and how it results in billing that comports with Commission orders and does not result in over-payment by Petitioners and over-recovery by BellSouth. We are hopeful that this issue can be settled prior to hearing.*[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-7 (B)

A. Monthly recurring charges should be at the rate established by the Commission, except in those cases where a Petitioner has paid for power plant installation on a non-recurring or individual case basis. As explained with respect to Item 76 / Issue 4-3, application of the current rates would result in double payment by Petitioners and over-recovery by BellSouth in such instances. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 81, Issue No. 4-8 [Sections 9.1.2, 9.1.3]: (A) Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option? (B) If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-8(A).

A. The answer to the question posed in this issue is "YES". Petitioners should be permitted to choose between a fused amp billing option and a power usage metering option. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Three BellSouth states, Florida, Georgia and Tennessee, have held that BellSouth must permit CLECs to adopt usage-based pricing ("used amp") billing for DC power recurring charges. These commissions have found that forcing CLECs to use fused amp billing is not technically required and could result in overcharges for power. Many states, including Texas, Illinois and Indiana, have also found it appropriate for CLECs to pay under the used amp method, on the ground that it is unreasonable to charge inflated amounts that reflect power not actually used.

The "fused amp" method is the traditional method for billing recurring charges, and is the only method that BellSouth wishes to permit Petitioners to use. Under this method, the CLEC pays for the total capacity that it could use, based on the installed infrastructure, rather than the power it actually uses. Because this method often imposes unnecessary costs, Petitioners should be entitled to choose which method BellSouth uses to bill for recurring DC power charges. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth maintains that Petitioners are entitled to choose between used amp and fused amp billing only in Tennessee, in accordance with that Commission's orders. In its position statement, BellSouth states that it refuses to provide this choice in Florida or Georgia — where the Commissions have adopted a similar order — for the preposterous reason that the precise rates, terms and conditions for used amp billing have not been developed, relieving BellSouth of any obligation to provide it. Thus, in any provision discussing usage metering as a billing option, BellSouth has inserted the words "in Tennessee." Although this Commission would have to determine the appropriate way in which to apportion its existing collocation power rates between infrastructure and consumption components, the parties have agreed to all other terms and conditions necessary to implement the used amp billing option. Indeed, it is possible that the Parties could agree to the appropriate apportionment, given an appropriate explanation and opportunity to understand BellSouth's proposed methodology – which presumably would mirror the approach taken in Tennessee.

BellSouth's position is unreasonable. Three BellSouth state commissions already have recognized the competitive value of a used amp billing option, and expressed concern that other billing methods could result in overcharges. And as BellSouth has already been ordered to permit used amp billing in three states, and has implemented such billing in Tennessee, Petitioners should be able to choose this type of billing in any state. Indeed, under the federal rules, any collocation arrangement provided by an ILEC in one state is presumed to be feasible and should be provided in every state in its region. This

presumption must hold true for collocation power billing as well. BellSouth demonstrably has the ability to provide used amp billing and thus should be required to provide it upon request in any state.

In sum, what BellSouth requests in this section is nothing more than the right to overcharge CLECs for power they do not use. That result has been rejected by several state commissions, and should similarly be rejected in this proceeding. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-8(B).

A. If the Petitioner chooses the power usage metering option, monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of Attachment 4 (see Item 79 / Issue 4-6 above). The Commission should ensure that its most recently approved recurring rates are apportioned appropriately into the consumption and infrastructure components. Nonrecurring charges for -48V DC power distribution should be as prescribed by the Commission. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Where Petitioners pay for power on a usage metering basis, the rates should be as set by the Commission unless, as explained in Issue 4-6, such rates would require a Petitioner to pay for infrastructure costs already covered by ICB non-recurring charges. As Petitioners have explained, it is inappropriate, and potentially anticompetitive, to require any carrier to pay both NRCs and redundant recurring charges for the same preparatory work. Thus, monthly charges for DC power should be assessed for the amperes used, according to

Commission rates, with credit provided to the extent that infrastructure costs have already been paid but are a component of the Commission's monthly rates as well. This proposal comports with Petitioners' consistent position regarding the interplay of ICB non-recurring charges and monthly recurring charges for collocation-related facilities. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it fails to account for power infrastructure charges already paid by Petitioners and it does not afford Petitioners a metered usage billing option. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 82, Issue No. 4-9 [Sections 9.3]: For BellSouth-supplied AC power, should CLEC be entitled to choose between a fused amp billing option and a power usage metering option?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 4-9.

A. The answer to the question posed in this issue is "YES". Where a Petitioner elects to install its own DC Power Plant, and BellSouth provides Alternating Current (AC) power to feed Petitioner's DC Power Plant, CLEC should have the option of choosing between fused amp billing and power usage metering options. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. This issue involves a scenario in which Petitioners install their own power converter, and convert BellSouth supplied AC power to DC power for their own use. Petitioners should

pay for BellSouth AC power in the same manner as for DC power. Specifically, and as proposed with respect to DC power, Petitioners should have the option of choosing between fused amp and metered usage billing options. Accordingly, Petitioners' proposed language states that "charges for AC power will be assessed in the same manner as charges for DC power are assessed, as set forth in Section 9.1 (including subsections above). This language is precise, definite, and provides BellSouth with fair compensation for the power it provides. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it does not allow Petitioners to choose a metered usage billing option. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 83, Issue No. 4-10 [Sections 13.6]: ***This issue has been resolved.***

ORDERING (ATTACHMENT 6)

Item No. 84, Issue No. 6-1 [Section 2.5.1]: Should payment history be included in the CSR?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-1.

A. The answer to the question posed in this issue is "YES". A subscribers' payment history should be included in the CSR to the extent authorized or required by the FCC,

Commission or End User. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale is twofold. First, such information must be made available as part of the Operational Support Systems ("OSS") UNE. BellSouth has this information in its OSS systems and is required by federal law to provide access to it. The FCC's rules do not contain an exemption that permits BellSouth to actively strip customer payment history from a CSR. Second, BellSouth's efforts to actively filters such information out are anticompetitive. BellSouth has such information by virtue of its monopoly legacy and enduring market dominance. It merely seeks to put competitors at a disadvantage by withholding such information. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HAVE OTHER COMMISSIONS REQUIRED BELLSOUTH TO CEASE STRIPPING SUCH INFORMATION FROM CSRs?

A. Yes, it is my understanding that the Alabama and Florida Commissions already have determined that BellSouth must not shield this information from its competitors in this way. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WOULD BELLSOUTH BE VIOLATING CPNI/PRIVACY RULES BY PROVIDING SUCH INFORMATION?

A. No, just as is the case in those states I just listed, it is my understanding that there would be no such violation here. On this point, it is important to note that the payment history is part of a CSR and that CLECs already get permission in the form of a LOA from customers in order to gain access to CSRs. Thus, this issue is not a "privacy" issue – it is

squarely a UNE/competition issue. In any event, when a customer gives a CLEC permission to view CSR information, it simply is not BellSouth's prerogative to say no and to withhold some of it. In that sense, BellSouth's actions are not only anti-competitive, they're also anti-consumer. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not suggested alternate language for this provision. BellSouth's position, however, is that payment history should be maintained as confidential information and is not necessary in order for a CLEC to provision service to an end user. This argument simply ignores that such information must be made available for two independently valid reasons. As I explained, first, the information is part of the OSS UNE and, second, it is not "confidential" if a consumer authorizes its release. BellSouth also claims that its systems will not permit this information to be shared on an end user by end user or CLEC by CLEC basis. But this is not something that needs to be done on an end user-by-end user or CLEC-by-CLEC basis. No systems change is needed other than disabling the system "enhancement" that strips CSR information in certain states. Obviously, if BellSouth can comply with the law and customer requests that they share such information in some states, it can comply in all states. On this point, however, I must add that the need for a systems change, if one were indeed needed, would be no excuse for failing to provide nondiscriminatory access to OSS and for failing to abide by consumers' desire that such information be shared with carriers that may be able to provide them with more favorable service options. BellSouth should therefore not be permitted to remove

customer payment history from a CSR, and Petitioners' language should be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 85, Issue No. 6-2 [Section 2.5.5]: Should CLEC have to provide BellSouth with access to CSRs within firm intervals?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-2.

A. The answer to the question posed in this issue is "NO." CLECs are not required by law to commit to specific intervals, and Petitioners do not have automated systems in place to handle CSR requests. Moreover, BellSouth refuses to commit to deliver CSRs within a firm interval. Petitioners, however, voluntarily will commit to use best efforts to provide CSRs within an average of 5 business days of a valid request, subject to the same exclusions applicable to BellSouth's delivery of CSRs. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. WiIlis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners are not incumbent monopolists, and, as such, they are not subject to the unbundling intervals and performance metrics that apply to BellSouth. In fact, Petitioners are not even required to negotiate this issue, but have done so in order to demonstrate that they are committed to take steps necessary to ensure that consumers are well served by a competitive marketplace. Notably, this is the first time that any of the Petitioners have been asked by BellSouth to commit to intervals of this type. Accordingly, a careful and cautious approach is best. The *voluntarily* commitment Petitioners offer commits them to use best efforts — which is a substantial contract term — in providing a CSR to BellSouth within 5 business days. This language should

provide BellSouth with ample assurances that it will obtain CSRs in a timely manner. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position is that CLECs should be required to provide CSRs to BellSouth in the same intervals prescribed by this Commission for BellSouth. In stating that position, BellSouth ignores the fact that the language it has tried to foist upon Petitioners does not contain the same interval included in BellSouth's Incentive Payment Plan ("IPP") package. BellSouth's CSR IPP interval is an average interval subject to a variety of exclusions. BellSouth's proposal excludes the averaging and the applicable exclusions – it simply is not "the same."

Even if BellSouth's proposed interval was the same (which it is not) BellSouth also ignores the fact the standard applies to it because it is an ILEC and as such it has Section 251 unbundling obligations which include access to OSS. CLECs such as the Petitioners are not similarly situated and do not have Section 251 unbundling obligations. On this point, it should be made clear that, to the extent that BellSouth prevails on its "not a Section 251 obligation, so it's not appropriate for arbitration" argument, it should lose this issue, as such a rationale (flawed as it is) should be applied consistently, if it is to be applied at all (and it shouldn't be applied).

In any event, BellSouth's position on this issue is patently unreasonable. CLECs are not and should not be held to the same (or, as BellSouth has proposed, more stringent) unbundling standards as BellSouth; they have never enjoyed a local monopoly nor have

they had the economies and scale needed to support automated systems, as BellSouth has. CLECs voluntarily are willing to agree to language that commits them to use best efforts to meet intervals that are eminently reasonable given their circumstances. Accordingly, the Commission should adopt Petitioners' proposal and reject BellSouth's proposal to impose super-251 intervals where none apply. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 86, Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3]: (A) ***This issue has been resolved.*** *(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-3(B).

A. If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Self help is nearly always an inappropriate means of handling a contract dispute. If there is a dispute, it should be handled in accordance with the Dispute Resolution provisions of the contract and not under the threat of suspension of access to OSS or termination of all services. If BellSouth is truly concerned about quickly resolving such issues, it should not continue to oppose including a court of law as an appropriate venue for dispute resolution. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language provides little more than the threat of suspension of access to OSS and the termination of all services (regardless of its potential impact on its competition or consumers who have been disloyal to BellSouth). While BellSouth offers as window dressing that if the CLEC disagrees with BellSouth's allegations of unauthorized use, the *CLEC* must proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. However, it is not at all clear whether BellSouth gets to pull the plug while the dispute is pending or whether the coercive pressure created by BellSouth's ambiguous language is all that it is seeking. In the end, neither CLECs nor their customers should be forced into such a precarious provision. Moreover, the Party seeking certain relief (in this case BellSouth), should be the Party that has to file actions under the Dispute Resolution provisions. Petitioners should not be forced to seek Dispute Resolution as a means of curtailing ongoing or potential damage from BellSouth self-help. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 87, Issue No. 6-4 [Section 2.6]: Should BellSouth be allowed to assess manual service order charges on CLEC orders for which BellSouth does not provide an electronic ordering option?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-4.

A. The answer to the question posed in this issue is "NO." If, at any time, electronic interfaces are not available to make placement of an electronic LSR possible, the Petitioner must use the manual LSR process for the ordering of UNEs and Combinations. In such cases where the Petitioner does not willfully choose to use the manual LSR process, it should be assessed the lower electronic LSR OSS rate. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners should not pay manual ordering fees when BellSouth's systems are unable to handle electronic orders. Federal law requires BellSouth to facilitate electronic ordering as much as possible as a means of enabling new entry. Where BellSouth fails to make electronic ordering available, Petitioners are delayed in serving their customers, as manual ordering is a more lengthy process. In this situation, Petitioners should not be doubly taxed by also being forced to pay a higher rate for this process.

At the very least, the Agreement should contain an express parity and nondiscrimination requirement, such that where BellSouth may use electronic ordering for a particular service for itself, it must provide the same electronic ordering for Petitioners. If Petitioners are forced to use manual processes for such orders, they must pay only the

electronic ordering charge — not the manual ordering charge. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language and position is based on its view that it is not required to provide electronic ordering capability for every function. BellSouth argues that it has implemented the Change Control Process for a CLEC's requests to change BellSouth's OSS capabilities if Petitioners are not satisfied with existing ordering capabilities. But, as the FCC's orders on OSS unbundling and Section 271 compliance demonstrate, BellSouth has an obligation to facilitate electronic ordering wherever possible. It should not be rewarded for failing to meet that obligation by charging a more expensive ordering fee. This result would in effect reward BellSouth for retaining inefficient systems. Thus, where Petitioner has been relegated to manual ordering, the electronic ordering charge should nonetheless apply. If the Petitioner should choose manual ordering voluntarily, this rule should of course not apply, and the manual order fee should be assessed. In this way, Petitioners will not be disadvantaged twice — through both a delay and an excessive fee — for BellSouth's inability to provide electronic ordering. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. ARE THERE INSTANCES WHERE BELLSOUTH'S ELECTRONIC OSS IS "AVAILABLE", BUT YOU ARE NEVERTHELESS FORCED TO USE MANUAL OSS?

A. Yes. NewSouth's experience has been that a significant amount (we currently estimate 25%) of NewSouth's facility orders have to be submitted manually because of address

validation errors. NewSouth has found BellSouth to be delinquent in updating address records -- this delinquency results in NewSouth's having to submit the orders manually. Clearly, in such instances, a CLEC should not have to pay the higher manual OSS charge. *[Sponsored by **1 CLEC**: J. Fury (NVX)]*

Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-5.

A. Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As explained above in Issue 2-17, all aspects of UNE ordering must be priced at TELRIC. This same rule should apply to Service Date Advancements. CLECs are entitled to access the local network and obtain elements at forward-looking, cost-based rates. Where they require such access on an expedited basis, which is often necessary in order to meet a customer's needs, CLECs should not be subject to inflated, excessive fees that were not set by this Commission and that do not comport with the TELRIC pricing standard. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position is that it is not required to provide expedited service pursuant to the Act. Therefore, BellSouth's language states that BellSouth's tariffed rates for service

date advancement will apply. BellSouth's tariffed rate, however, is $200.00 per element, per day. Thus, for example, a request to speed up an order for a 10-line customer by 2 days would cost $4,000.00. This fee is unreasonable, excessive and harmful to competition and consumers. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. IS ISSUE 6-5 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Obviously, the answer to that question is "yes". The manner in which BellSouth provisions UNEs is absolutely within the parameters of Section 251. Where Petitioners require expedited provisioning, that request remains part of the overall UNE provisioning scheme. And, as we have explained, that request should result in TELRIC rates as for any other UNE order. BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Setting prices and arbitrating the terms and provisions associated with Section 251 unbundling are squarely within the Commission's jurisdiction and are appropriately resolved in this arbitration proceeding. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 89, Issue No. 6-6 [Section 2.6.25]: Should CLEC be required to deliver a FOC to BellSouth for purposes of porting a number within a firm interval?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-6.

A. The answer to the question posed in this issue is "NO". Petitioners are not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver FOCs within a firm interval. Petitioner are, however, subject to the same exclusions that

apply to BellSouth's delivery of a FOC, willing to commit to use best efforts to return a FOC to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after the Petitioner's receipt from BellSouth of a valid Local Service Request ("LSR"). *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As explained above regarding Issue 6-2, Petitioners are not required to provide, or negotiate to provide, firm intervals to BellSouth for any service. We are not incumbent monopolists. In fact, we are not required to negotiate the issue of service intervals, but have done so to demonstrate our good faith and commitment to ensuring that consumers receive prompt, quality service. Moreover, BellSouth has never sought interval commitments from us prior to this Agreement. Accordingly, we have proposed, however, to promise best efforts — an substantial standard in any contract — to provide FOCs for number porting within 5 business days. These intervals are a reasonable requirement for a new entrant, and do not unduly delay BellSouth's services. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it seeks to impose standards upon CLECs for which there is no statutory basis. Moreover, the standard BellSouth proposes is more stringent than that which applies to its own operations. BellSouth maintains that because it is required to provide FOCs to CLECs in intervals prescribed by this Commission, which carry IPP penalties if not met, Petitioners should be held to the same standard. Its

purported rationale is that the End User customer is impaired by being unable to receive the same service interval from all local service providers. This position should be rejected. BellSouth itself has refused to provide firm intervals in the Agreement for these very operations, yet it has far greater resources to do so than Petitioners have. Moreover, BellSouth's IPP interval for FOCs is itself subject to caveats and exclusions, such that the interval is not always applied. These exclusions include certain holidays, orders classified as "projects," and weekdays between 6:00 pm and 8:00 am, and over the weekend (in other words, non-business hours). BellSouth's proposed language does not include all of these exclusions.

Moreover, BellSouth again ignores the fact that it is subject to Section 251 OSS requirements that simply do not apply to Petitioners. Thus, if BellSouth's argument that issues not expressly addressed by Section 251 "are not appropriate for arbitration," then its attempt to impose FOC intervals on Petitioners is not appropriate for arbitration either.

Regardless of the lack of a statutory standard applicable to Petitioners, BellSouth's position is unreasonable. No CLEC has the operational systems that enable it to process orders in the way that BellSouth's OSS does. BellSouth's proposed language is simply too onerous, and is therefore an unreasonable burden to impose. Petitioners have in good faith offered their best efforts to provide FOCs within 5 business days, and that commitment is certainly sufficient to ensure timely service. Petitioners' language should therefore be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 90, Issue No. 6-7 [Section 2.6.26]: Should CLEC be required to provide Reject Responses to BellSouth within a firm interval?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-7.

A. The answer to the question posed in this issue is "NO". Petitioners are not required by law to commit to specific intervals, and do not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver Reject Responses within a firm interval. Petitioners are willing, however, subject to the same exclusions that apply to BellSouth's delivery of Reject Responses, to commit to use best efforts to return Reject Responses to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after the Petitioner's receipt from BellSouth of a valid LSR. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As explained above regarding Issues 6-2 and 6-6, Petitioners are not required to provide, or negotiate to provide, firm intervals to BellSouth for any service. We have nonetheless agreed to provide BellSouth with a promise to use best efforts to provide a Reject Response within 48 hours. This is an aggressive timeframe, and will provide BellSouth ample time to amend or correct its orders and secure an expeditious resolution of its orders. This proposal is commercially reasonable, especially given that Petitioners' resources cannot match BellSouth's, and is moreover a concession by Petitioners that demonstrates their willingness to cooperate with BellSouth beyond what its legal obligations require. *[Sponsored by **3 CLECs**: : R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it seeks to impose standards upon CLECs for which there is no statutory basis. Moreover, the standard BellSouth proposes is more stringent than that which applies to its own operations. BellSouth again maintains that because it must provide FOC Reject Responses to CLECs in intervals prescribed by this Commission or face IPP penalties, then Petitioners must be held to the same standard. End User service is again BellSouth's purported incentive for seeking to impose this standard. Yet even BellSouth's legal obligation to provide Reject Responses within a specific interval is not always applied, because, as with CSR and FOC intervals discussed above, the IPP requirements contain the same exceptions: holidays, orders classified as "projects," and non-business hours. Once again, BellSouth does not propose that the same exceptions apply to CLEC intervals.

As Petitioners have explained, however, Section 251 does not require CLECs to adhere to, or even to negotiate, service intervals. Thus, BellSouth's staunch position that issues "are not appropriate for arbitration" unless expressly required by Section 251 must apply equally to this issue. Petitioners must not be held to a standard that BellSouth will not meet as well.

In any event, BellSouth is being unreasonable in its insistence that Petitioners, as new entrants to the local market, must be held to the same ordering standards that BellSouth, by virtue of its monopoly control over all network ordering systems, can satisfy. Twenty-four hours is too short an interval to impose, especially given the fact that CLECs do not

have the same unbundling standards as incumbents. Customer service will not suffer significantly under a 48-hour interval, whereas Petitioners would incur too great a burden if forced to develop, in a matter of months, ordering systems that are as extensive as those that BellSouth virtually inherited. Petitioners' language should therefore be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 91, Issue No. 6-8 [Section 2.7.10.4]: Should BellSouth be required to provide performance and maintenance history for circuits with chronic problems?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-8.

A. The answer to the question posed in this issue is "YES". BellSouth should disclose all available performance and maintenance history regarding the network element, service or facility subject to the chronic trouble ticket upon request from a Petitioner. *[Sponsored by **3 CLECs**: : R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners feel that it is reasonable that they should have access to all available performance and maintenance history regarding a UNE subject to a chronic trouble ticket. Such information could help Petitioners' technicians test and trouble shoot. Moreover, federal law has already imposed this requirement, at least with respect to loops. As explained with respect to Issue 2-25, BellSouth must provide all Loop Makeup information to a requesting CLEC. This obligation includes information about past trouble on a particular loop, as that information may well determine the services that a Petitioner is likely to be able to provide over that loop. Without such information, customer service would be at risk, and in the event of a problem, Petitioners might not

have adequate knowledge to fix it quickly. In addition, BellSouth is the sole source for this information, and it certainly relies on this knowledge regularly in serving its own customers. For it to refuse to provide it to a CLEC is unlawfully discriminatory. Where BellSouth has access to a service or information for its own operations, fundamental principles of parity require that CLECs have access to it as well. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not provided alternative language for this section. Its position is that network performance and maintenance history is BellSouth's proprietary information, and thus will not agree to provide circuit trouble information under the Agreement. This assertion flatly violates federal law, as BellSouth must provide unbundled access to OSS which includes access to information in its possession about the network elements it is required to unbundle (including all Loop Makeup information) to a requesting CLEC. That information is equally "proprietary" as circuit trouble information, and yet the FCC requires its disclosure as a component of the loop provisioning process. In fact, BellSouth is regularly required as a matter of OSS access to disclose information about several aspects of the network, such as collocation space and available facilities, that are no less "proprietary" than what Petitioners seek in this provision. And, as we have explained, the inability to know whether and to what extent a particular loop experienced technical difficulties is absolutely necessary to ensuring the highest quality service for our customers. BellSouth's position is thus unreasonable, discriminatory, and contrary to

the public interest. Petitioner's language should be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 92, Issue No. 6-9 [Section 2.9.1]: Should charges for substantially similar OSS functions performed by the parties be reciprocal?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-9.

A. The answer to the question posed in this issue is "YES". The Parties should bill each other OSS rates as set forth in Exhibit A of Attachment 2 of the Agreement, for substantially similar OSS functions performed by the Parties. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In any contract, it is reasonable for the parties to pay each other reciprocal rates for services that are functionally the same or substantially similar. In this instance, it is reasonable for BellSouth to pay us the same amount for OSS features and functionalities that we pay to BellSouth. Each party will be providing the same assistance to the other, and for the same purpose — to connect and serve customers. In addition, as a matter of administrative convenience it greatly simplifies billing and collection when both parties are charging the same fee for the same services. Petitioners' language is therefore extremely reasonable, as well as fair, and should be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would permit Petitioners to bill the same OSS charge as BellSouth only if we perform OSS functions "pursuant to the terms and conditions under which BellSouth bills [Petitioner] for OSS, including FOC turnaround times the same as BellSouth's, due date intervals the same as BellSouth's … and CSRs handled under the same terms and conditions that BellSouth is held to[.]" In other words, reciprocal rates apply only if Petitioners adhere to the same commission-determined intervals as BellSouth. BellSouth's position is unreasonable, as it seeks to benefit financially from its own imposing of unreasonable interval requirements on the Petitioners. Petitioners are not in the same position as BellSouth, with the same inherited and subsidized facilities, to adhere to the same OSS intervals imposed by the Commission on BellSouth. Yet BellSouth believes that it is appropriate to penalize Petitioners, in the form of zero rates for services performed by CLECs, for not being as advantaged as BellSouth. In addition, BellSouth's language would, by depriving us of any OSS cost recovery, impede Petitioners' ability to develop the OSS systems that could eventually meet BellSouth's desired intervals, which only serves to slow the development of competition. For these reasons, Petitioners' proposal for reciprocal OSS rates should be adopted. *[Sponsored by **3 CLECs**: R. Collins (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Item No. 93, Issue No. 6-10 [Section 3.1.1]: (A) Can Bellsouth make the porting of an End User to the CLEC contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the End User changing its PIC?
(B) If not, should BellSouth be subject to liquidated damages for imposing such conditions?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-10(A).

A. The answer to this question, as posed, is "NO". BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between a Petitioner and BellSouth Long Distance or another third party carrier. BellSouth's practice represents an anticompetitive leveraging of its ILEC status in favor of, and in collusion with, its Section 272 affiliate. More specifically, BellSouth may not condition its compliance with these obligations under the Agreement upon a Petitioner's or its End-Users' entry into any billing and/or collection arrangement, operational understanding, relationship or other arrangement with one or more of BellSouth's Affiliates, and/or any third party carrier. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Customers are entitled to choose to switch their local service without any conditions placed on them by BellSouth. Petitioners thus seek to include explicit language in the Agreement that BellSouth cannot make the switching of a customer contingent upon whether the chosen CLEC has a billing agreement with BellSouth Long Distance. There is no justifiable basis for BellSouth to refuse to this language. As an initial matter, as we have explained regarding Issue G-14, conditioning performance of any agreement the actions of a third party is unacceptable as a matter of contract. In addition, BellSouth's policy of denying customer choice based on the contractual obligations of their chosen CLEC is punitive and anticompetitive. It is moreover impermissible for BellSouth to thwart Congress's goals of establishing local competition in order to increase or facilitate the market presence of BellSouth's long distance entity. Whether a CLEC has a billing

agreement with BellSouth Long Distance is irrelevant to the ability of the CLEC to provide quality local service. Petitioners' language that would preclude BellSouth from refusing to port a customer based on such an unreasonable condition and should therefore be adopted. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS BELLSOUTH'S POSITION ON THIS ISSUE UNREASONABLE?

A. BellSouth has not provided alternative language for this section. BellSouth's position, however, is that if another carrier restricts the conditions under which that carrier's end user can retain a PIC, the Petitioner should be required to either comply with that carrier's requirements or transfer the end-user with another PIC. However, only the CLEC's customer can change a PIC. If BellSouth Long Distance wants to restrict its long distance service offering only to BellSouth customers or to select carriers, that is a matter between it and the customer to resolve. It is no reason to hold-up the fulfillment of the customer's choice to change local PICs. BellSouth's reason for getting involved is obvious – but its attempt to protect its supposedly separate affiliate at the expense of competitors and consumers alike should not be countenanced. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-10(B).

A. Liquidated damages are appropriate in this instance because it would be impossible or commercially impracticable to ascertain and fix the actual amount of damages as would be sustained by a Petitioner as a result of such action by BellSouth. A liquidated damage amount of $1,000 per occurrence per day is a reasonable approximation of the damages likely to be sustained by a Petitioner, upon the occurrence and during the continuance of

any such breach. Liquidated damages should be in addition to and without prejudice to or limitation upon any other rights or remedies a Petitioner and/or any of its End Users may have under this Agreement and/or other applicable documents against BellSouth. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Liquidated damages are a common mechanism in commercial contracts for efficiently and meaningfully addressing a breach committed by the other party. They require no complex figuring of damages, but rather are explicit and definite, thus putting the other party on notice of the consequences of a breach. In this instance, the conduct that Petitioners seek to prevent is egregious, and potentially quite damaging to both competition and consumers. Liquidated damages are a fair and expedient way to resolve what would be decidedly unfair behavior by BellSouth. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth maintains that liquidated damages provisions are inappropriate. Given BellSouth's refusal to agree to Petitioners' proposal for this section, that reaction is unsurprising. Yet where BellSouth unreasonably seeks to advantage its Long Distance entity — a third party to this Agreement — by conditioning the porting of a customer on whether the chosen CLEC has a billing arrangement with that entity, a swift and self-effectuating remedy is warranted. The Agreement should therefore explicitly provide liquidated damages where BellSouth is shown to have conditioned customer porting on

the purchase of other BellSouth services. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: (A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?

(B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-11(A).

A. The answer to this question is "YES". Mass migration of customer service arrangements (*e.g.*, UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used. *[Sponsored by **3 CLECs**: : R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Consolidation in the CLEC industry has recently brought to the forefront issues surrounding mass migration and the need to ensure that there is an efficient, predictable and lawfully priced process in place for accomplishing the mass transfer of customers and associated serving arrangements from one carrier to another. It is in consumers' best interests that such transitions happen seamlessly, quickly and at a reasonable price. Mass migration scenarios that result from CLEC mergers or asset acquisitions should not

translate into an opportunity for BellSouth to make things difficult, create delay or to extract a ransom to get the work done.

Because mass migrations essentially amount to bulk porting situations, they are not extraordinarily complex and they do not require BellSouth to do new and unique things. Accordingly, they should be made possible by submission of an electronic LSR (or spreadsheet prior to that becoming available) and accomplished within a definite timeframe such as the 10-calendar day interval that Petitioners propose. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The problem with BellSouth's language is that it leaves the determination of what is expeditious and reasonable entirely up to BellSouth. Moreover, BellSouth controls the means, pace and price for how these things get accomplished. It is no consolation that it promises to do that the same way for everybody. Too many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner. Yet, facing a task that must be done and the reality that there is nowhere else to go to get it done CLECs ultimately must endure, litigate or pay the price demanded by BellSouth. BellSouth simply should not be permitted to leverage its control over UNEs and other service arrangements in such a way. Because this control necessitates the involvement of BellSouth, mass migrations of customers should be accomplished in predictable time periods and at fair and predictable rates that comport with the TELRIC

pricing standard. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-11(B).

A. An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge Petitioners a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly, BellSouth should establish and only charge Petitioners a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As Petitioners have maintained, TELRIC is the appropriate methodology for setting rates that are related to the provisioning of UNEs. Performing mass migrations of customers must be subject to this same standard. This work should not be held to ICB pricing, as it involves no different work than customer porting generally, which is priced at TELRIC. Pricing on an ICB basis render carriers unable to predict their cost of service and, as suggested by BellSouth, includes no commitment to adhere to TELRIC pricing principles. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Tellingly, BellSouth proposes no language regarding rates. BellSouth's position, however, is that the rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved. As we have explained, such "negotiated" rates — ICB prices — are inappropriate for mass migrations. Such rates are easily inflated, due to the advantage in bargaining power enjoyed by BellSouth. For all these reasons, the Agreement should state that mass migrations will be priced in accordance with TELRIC. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. DO YOU HAVE ANY EXPERIENCE WITH BELLSOUTH "NEGOTIATED" ICB-PRICING THAT SUGGESTS THAT AFFIRMATIVE LANGUAGE REQUIRING TELRIC-BASED PRICING IS NEEDED?

A. Yes. Xspedius once attempted to accomplish the mass migration of several special access circuits to UNE loops. Although this event would require nothing more than a simple records change for each circuit, BellSouth quoted a minimum price of several hundred dollars. In addition, BellSouth proposed several hundred dollars in charges associated with "project management." These proposal obviously outweigh the approximately $21.00 rate approved by the South Carolina Commission for converting special access to UNE combinations. Yet, because only a single UNE was involved, BellSouth insisted that it was justified in imposing what amounts to a king's ransom. In the end, the effect of this "negotiated ICB rate" was that Xspedius chose not to order the conversions and BellSouth still reaps the rewards of selling Xspedius over-priced special access. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-11(C).

A. Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth must be held to an objective and definite timeframe for porting customers to Petitioners, whether on a small scale or via mass migrations. A 10-day interval is a reasonable requirement, and should be ample time for BellSouth to complete the necessary work. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes no language here and appears inclined to leave it all up to negotiations. In its position statement, BellSouth maintains that no finite interval can be set to cover all potential situations, and that while shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties. This position is unreasonable. As we have explained, BellSouth's purported need for special "project management" is unsupported, and should not be used as an excuse to delay the conversion of customers. Mass migrations should not be delayed on the ground that they are somehow different from generic requests to port a customer or update BellSouth's records. Since they simply involve bulk submission of such requests, petitioners' 10-day interval should therefore be stated explicitly in the Agreement. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. IS ISSUE 6-11 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Yes. The manner in which BellSouth provisions UNEs is absolutely within the parameters of Section 251. The mass migrations of customers served via UNEs, resale and Other Services is inextricably linked to BellSouth's Section 251 obligations. Moreover, it seems implausible that the migration of customers to service configurations covered by the Agreement should not be covered by the Agreement and resolved in this arbitration. BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Prescribing the terms by which BellSouth switches customers and updates records associated with UNE and other serving configurations is squarely within the Commission's jurisdiction. *[Sponsored by **3 CLECs**: R. Collins (KMC), H. Russell (NVX), J. Falvey (XSP)]*

BILLING (ATTACHMENT 7)

Item No. 95, Issue No. 7-1 [Section 1.1.3]: What time limits should apply to backbilling, over-billing, and under-billing issues?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-1.

A. There should be an explicit, uniform limitation on a Party's ability to engage in backbilling under this Agreement. The Commission should adopt the CLEC proposed language, which would limit a Party's ability to bill for services rendered no more than ninety (90) calendar days after the bill date on which those charges ordinarily would have been billed. For purposes of ensuring that a party could reconcile backbilled amounts, the CLEC proposed language provides that billed amounts for services that are rendered more than one (1) billing period prior to the bill date should be invalid unless the billing

Party identifies such billing as "backbilling" on a line-item basis. Finally, the CLEC proposed language provides an exemption to the ninety (90) day limit whereby backbilling beyond ninety (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be invoiced under the following conditions: (1) charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party. With respect to over-billing, the Parties have negotiated and separately agreed to a 2-year limit on filing billing disputes (thus, Petitioners do not believe that BellSouth properly has inserted this as a sub-issue here). With respect to under-billing, Petitioners believe that the subissue is covered by any provisions that address backbilling. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION THAT BACKBILLING SHOULD GENERALLY BE LIMITED TO NINETY DAYS?

A. It comes down to business and financial certainty. In order for CLECs to pay invoices in a timely manner and keep adequate financial records, there must be a limit on the Parties' ability to backbill for services rendered. The Parties should not have unlimited time to backbill each other in an attempt to recoup past amounts not properly billed. Neither CLECs nor BellSouth should be required to reopen their financial books because the other did not issue accurate invoices in a timely manner. To allow backbilling more than 90 days would create too much business uncertainty between the Parties and ultimately lead to billing disputes. Accordingly, the Commission should adopt the CLEC proposed

language which establishes a general 90 day limit on backbilling. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. ARE THERE ANY CIRCUMSTANCES IN WHICH BACKBILLING MORE THAN NINETY DAYS SHOULD BE PERMITTED?

A. Yes, Petitioners' proposed language contemplates that there may be circumstances under which the Parties may backbill for past due amounts beyond 90 days and up to 6 months. Such circumstances include backbilling for charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and charges incorrectly billed due to erroneous information supplied by the non-billing Party. Such exemptions to the 90 day backbilling limit would allow the Parties to recover past amounts not properly billed due to errors beyond their control while establishing a 6 month limit to avoid excessive backbilling. The CLECs propose a caveat, however, that any amount backbilled more than 1 billing period must be clearly identified as "backbilling" on a line-item basis. This requirement would allow the Parties to easily identify backbilled amounts, and reconcile invoices and will likely decrease the number of billing disputes between the Parties. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that all charges incurred under the Agreement are subject to the state's statute of limitations or applicable Commission rules. BellSouth's language is inadequate because it fails to provide uniform, workable

parameters by which the Parties can invoice each other for services rendered in prior billing periods. As discussed below, the statute of limitations vary greatly among the states in the BellSouth territory and, thus, do not provide an effective limit to backbilling.

In South Carolina, BellSouth asserts that the statute of limitations is 6 months. If that is the case, then the CLEC proposed language is consistent with the state statute of limitations, although the CLEC proposed language narrowly identifies those circumstances under which a Party may backbill up to 6 months - those circumstances where the billing errors giving rise to the backbilling are beyond the billing Party's control.

The state statute of limitations within the BellSouth territory vary greatly. It is unreasonable for a CLEC to have to alter its billing processes to allow for backbilling that could range, for example, from 6 months in South Carolina to 6 years in Tennessee. The purpose of this Agreement is to set forth the terms and conditions under which the Parties will interconnect and CLECs will purchase UNEs and related services from BellSouth. Accordingly, the Agreement should serve as a guide to the company personnel responsible for implementing the Agreement. CLEC billing personnel should be able to develop processes implementing the billing provisions of this Agreement, including backbilling policies based on the limits proposed by the CLECs. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HAVE THE PARTIES AGREED TO LANGUAGE IN ANOTHER PART OF THE AGREEMENT THAT ADDRESSES OVER-BILLING?

A. Yes, the Parties have effectively addressed over-billing by limiting the filing of billing disputes to amounts no more than 2 years old. Specifically, Section 2.1.7 of Attachment

7 states, "[n]otwithstanding the foregoing, new billing disputes may not be filed pertaining to a bill when a period of two (2) years from the bill issue date has elapsed." BellSouth agreed to a uniform cap of two (2) years for billing disputes even through such timeframe is longer than the statue of limitations in Florida, Louisiana, and South Carolina, and shorter than the statute of limitations in the other states in the BellSouth region. BellSouth's position with regard to billing disputes is squarely contradictory to its position for backbilling, and BellSouth has not provided any compelling reasons why it will not agree to a uniform time limit for backbilling as it done with respect to billing disputes. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. ARE YOU AWARE OF BACKBILLING BEING ADDRESSED IN ANY STATE INTERCONNECTION ARBITRATION PROCEEDINGS?

A. Yes, it is my understanding that the North Carolina Public Utilities Commission (Docket No. P-500, Sub. 18) and the Georgia Public Service Commission (Docket No. 16583-U) have addressed this issue in the interconnection arbitration between ITC^DeltaCom and BellSouth. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. ARE YOU AWARE OF ANY OTHER BELLSOUTH INTERCONNECTION AGREEMENTS THAT INCLUDE A UNIFORM LIMIT ON BACKBILLING?

A. Yes, as discussed above with regard to the Georgia Staff recommendation, the AT&T/BellSouth Agreement includes a 12-month limit on backbilling; the MCI/BellSouth agreement provides a 12-month limit as well. Accordingly, both AT&T, MCI and all other carriers that have adopted these two interconnection agreements (likely

a substantial number of carriers) are following a uniform limit on backbilling. BellSouth has agreed to a uniform backbilling limit in other interconnection agreements and has not provided any persuasive reasons why it cannot agree to the same with the Petitioners. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 96, Issue No. 7-2 [Section 1.2.2]: (A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-2(A).

A. Petitioners submit that a Party should be entitled to make one corporate name, OCN, CC, CIC or ACNA change ("LEC Change") in the other Party's databases, systems and records within any 12 month period without charge. For any additional "LEC Changes", TELRIC - compliant charges should be assessed. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Due to the current status of the telecommunications industry, it is likely a company will go through a corporate reorganization, merger, acquisition, etc. that will require some type of system, database, or records change(s) to reflect the change ("LEC Change"). It is my understanding that generally "LEC Changes" are simple administrative changes that are not unduly time or labor intensive. Therefore, CLECs should be afforded one "LEC Change" in any twelve (12) month period without charge.

In the commercial setting, businesses have to deal every day with corporate reorganizations, mergers, acquisitions, etc. Most businesses, however, do not get to

impose a charge for making a system modification to recognize such a change in corporate status or identity. Rather, it is treated as a cost of doing business. Nonetheless, BellSouth seeks to impose charges, via the cumbersome and uncertain BFR/NBR processes, to recover costs for implementing "LEC Changes". To the extent the Commission concludes that BellSouth may recover such cost, BellSouth should only be able to do so if a CLEC requests a "LEC Change" more than once in a twelve-month period and any such charge for additional "LEC Changes" should be TELRIC compliant rates, as they are a necessary part of the business of gaining access to and using cost-based interconnection, UNEs and collocation. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. ARE YOU AWARE OF THIS PROVISION BEING INCLUDED IN ANY OTHER INTERCONNECTION AGREEMENTS?

A. Yes, it is my understanding that SBC had included, in its 13-State Agreement, a provision that provides for a one-time OCN/AECN change, without charge, as part of a corporate name change. For example, this provision is included in the Stonebridge Communications, Inc.'s 13-State Agreement, which SBC lists as current. [Section 4.9, GT&Cs]. It is also included in the Digital Telecommunications, Inc.'s 13-State Agreement [Section 4.9, GT&Cs]. Further, the Time Warner/SBC Wisconsin Agreement, which is a modified 13-State Agreement, also provides for a one-time OCN/AECN change without charge [Section 4.8, GT&Cs]. *[Sponsored by **2 CLECs**: M. Johnson (KMC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require a CLEC to go through the BFR/NBR process in order to conduct a "LEC Change". Specifically, BellSouth's language states, "…[CLEC] shall bear all costs incurred by BellSouth to convert [CLEC] to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s)… and will be handled by the BFR/NBR process." It is BellSouth's position that CLECs should be responsible for all "reasonable records change charges" via the BFR/NBR process. It is my understanding that the BFR/NBR process is a lengthy, expensive and typically unsatisfactory process. The BFR process is used to develop a new or modified UNE or related services pursuant to the Act, and the NBR process is used to develop an entirely new network element or service not required by the Act. By requesting a "LEC Change", CLECs are hardly requesting anything that rises to the level of a new UNE or new service. Rather, CLECs are asking for BellSouth to make an administrative change in its systems and databases to reflect a corporate identity change. Petitioners have specifically negotiated this provisions to incorporate language addressing "LEC Changes" in the Agreement because they do not want to be subject to BellSouth's murky BFR/NBR process for this type of request. Further, Petitioners want certainty as to the cost BellSouth will charge for a "LEC Change". Ultimately, these types of records changes must be done and Petitioners do not want to be put in the position of having to pay whatever price BellSouth demands, no matter how excessive. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-2(B).

A. Petitioners submit that "LEC Changes" should be accomplished in thirty (30) calendar days. Furthermore, "LEC Changes" should not result in any delay or suspension of

ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. Finally, with regard to a Billing Account Number ("BAN"), the CLECs proposed language provides that, at the request of a Party, the other Party will establish a new BAN within ten (10) calendar days. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As discussed above, a "LEC Change" is simply an administrative records change in BellSouth's systems and databases and, accordingly, 30 days is ample time to complete such a change. Furthermore, the Agreement should be clear that "LEC Changes" will not disturb or delay the provisioning of any service orders or the operational interfaces between Petitioners and BellSouth, including access to BellSouth's OSS. The Agreement must be clear on this point so that there is no opportunity to use a "LEC Change" as an excuse for provisioning delays or denial of the ability to access BellSouth's OSS (and the attendant ability to order UNEs and other services). Finally, due to the importance of accurate billing between BellSouth and a CLEC, the Parties should establish BANs for the other party within ten (10) calendar days. A billing account change should be a simple records change and should be done on an expedited basis to avoid any billing discrepancies and the disputes that might result. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth does not include any intervals for completing "LEC Changes" in its proposed language. It is also my understanding that there are no intervals for "LEC Changes" or equivalents in any of the BellSouth intervals guidelines or operational guides. BellSouth's proposed language provides that "LEC Changes" be handled by the BFR/NBR process. This Commission should find that intervals for "LEC Changes" should not be left to BellSouth's discretion though the amorphous BFR/NBR processes. The Agreement should include precise intervals that the Parties can rely on in their course of dealings under the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS ISSUE 7-2 APPROPRIATE FOR ARBITRATION?

A. In its position statement, BellSouth asserts that Issue 7-2 should not be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in Section 251 of the 1996 Act. BellSouth is mistaken. Regardless of whether LEC Changes are expressly mandated under Section 251 or state law, this issue plainly involves BellSouth's OSS and billing for UNEs, collocation and interconnection which is clearly encompassed by Section 251. Moreover, this issue goes directly to ensuring that BellSouth's practices are just and reasonable, which are always within the jurisdiction of this Commission. For these reasons, Issue 7-2 is properly before this Commission. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 97, Issue No. 7-3 [Section 1.4]: When should payment of charges for service be due?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-3.

A. Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill, in those cases where correction or retransmission is necessary for processing. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners need at least 30 days to review and pay invoices. In other commercial settings in which parties have established business relationships, the payor may be afforded 45 days or more to pay an invoice. Furthermore, it is not uncommon for parties to a contract to develop a course of dealings in which a party is not strictly held to a certain payment date. Nevertheless, in order to try to settle as many billing issues as possible, Petitioners agreed to BellSouth's proposal for a thirty (30)-day payment deadline (one billing cycle). Under such a strict deadline, it is imperative that CLECs be given the full thirty (30) days to review and pay those bills. It is Petitioners' experience, however, that BellSouth is consistently untimely in posting or delivering its bills and those bills are often incomplete and sometimes incomprehensible. Therefore, in effect BellSouth is actually giving Petitioners far fewer than thirty (30) days to pay invoices, which is neither typical nor acceptable in a commercial setting, especially in this case, where the bills are numerous, voluminous and complex. Thus, the Commission should find that the thirty (30)-day payment due date must be established from the time a Petitioner receives a complete and fully readable bill via mail or website posting. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HAVE YOU TRACKED HOW LONG IT TAKES BELLSOUTH TO POST OF DELIVER ITS BILLS?

A. Yes. We have found that it takes on average 7 days after the issue date for NuVox to receive a bill from BellSouth. NuVox conducted a study of how long it takes NuVox to receive an electronic invoice from BellSouth. NuVox conducted this study from July 2002 through July 2003. Although the times recorded by NuVox varied from 3 days to over 30 days the average time it takes BellSouth to deliver its electronic bills to NuVox is 7 days. We tracked the issue separately for our NewSouth division, as BellSouth has billed and for the time being will continue to bill NewSouth separately. NewSouth's experience has been that, by the time it receives its bills from BellSouth, it has anywhere from 19-22 days to process bills for payment. This amount of time is inadequate as it does not allow NewSouth to effectively and completely review and audit the bills it receives from BellSouth. *[Sponsored by **1 CLEC**: H. Russell (NVX)]*

Q. HAVE YOU TRACKED THE DIFFERENCE BETWEEN THE DATE BELLSOUTH POSTS ON THE BILL AND THE DATE THE BILL IS RECEIVED BY XSPEDIUS?

A. Yes. My company has tracked the difference between the date posted on the BellSouth bill and the date the bill is actually received by Xspedius. We began tracking this data in December, 2003. Our results demonstrate that it takes on an average 6.45 days for Xspedius to receive a bill from BellSouth. Although the average time is 6.45 days, we have tracked bills that Xspedius has received from BellSouth in as little as 2 days and as long as 22 days. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that payment of charges for services rendered must be made on or before the next bill date. This language is inadequate in that it does not account for the fact that there is typically a long gap between the time a bill is "issued" and the date upon which it is made available to or delivered to a Petitioner. BellSouth's language also makes no attempt to mitigate the problems caused in circumstances when its invoices are incomplete and/or incomprehensible. When this occurs, the CLEC already has a late start in paying the invoice and then may also need to spend extraordinary amounts of time attempting to reconciling an such invoices. Therefore, under BellSouth's proposal Petitioners are not getting thirty (30) days to remit payment.

The Commission should take note that not only is less than thirty (30) days to remit payment for services rendered unacceptable in most commercial settings, but CLECs have the added burden of extraordinary pressure from BellSouth to pay on time. The alterative to paying on time is that Petitioners' capital will be tied up in security deposits and/or late payments. By proposing the next bill date as the payment due date as opposed to thirty (30) days after receipt of a complete and readable bill, BellSouth does not afford Petitioners adequate time to review and pay invoices and unfairly raises the likelihood that a Petitioner would be forced to tie-up much needed capital in a deposit. BellSouth is, in essence, using its monopoly legacy and bargaining position to force CLECs to either remit payment faster than almost any other business or in the alternative face substantial

late payment penalties and increased security deposits. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 98, Issue No. 7-4 [Section 1.6]: (A) What interest rate should apply for late payments?

(B) What fee should be assessed for returned checks?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-4(A).

A. The interest rate that should apply for late payments is a region-wide rate of one (1) percent per month under the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Agreement should establish a definite, consistent interest rate for late payments. A uniform rate will allow the Parties to easily implement this provision of the Agreement, on a multi-state basis, and alleviate the need for billing personnel to engage in research to determine the appropriate late payment interest rate. Furthermore, BellSouth's FCC Tariff. No. 1 [SECTION 2.4.1(B)(3)(b)] includes a one (1) percent interest rate on late payments for all interstate services. BellSouth should follow the same approach for late payment interest rates under this Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that the Parties will use the late payment interest rates set forth in three separate tariffs: the General Subscriber Services Tariff, Private Line Tariff, and the Interstate Access Tariff. Petitioners cannot reasonably be expected

to determine the correct late payment interest rate by searching and tracking three separate tariffs and then trying to guess which one applies in which instances. BellSouth has not provided, through the negotiations process, any rational or logical method for Petitioners to ascertain which rate, from which tariff, applies for each state. BellSouth's proposed contract language is no more help as it simply states that the late payment interest rate, from the above mentioned three tariffs, will apply, as appropriate. Under BellSouth's proposal, not only would Petitioners be required to check up to 27 BellSouth tariffs to determine the appropriate late payment interest rate, but they would also have to monitor all 27 tariffs on a regular basis to keep track of any changes.

During negotiations, BellSouth repeatedly argued that its billing systems could not handle a single percentage for late payments for the entire BellSouth region. The Commission should recognize that this is a tired and unpersuasive argument as BellSouth found a one (1) percent interest rate acceptable for late payments on all interstate services, regardless of the BellSouth state or states involved, and has not provided any valid reasons why the same cannot apply to billing under Petitioners' interconnection agreements. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-4(B).

A. A uniform region-wide $20 fee for all returned checks should apply. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. A definite, consistent returned check fee should be established in the Agreement for ease of use as well as consistent and predictable dealings between the Parties. Twenty dollars

($20) is a reasonable amount and is generally reflective of the returned check fees included by BellSouth in its General Subscriber Services Tariffs ($20 in Alabama, $20 in Florida, $30 in Georgia, and $25 in North Carolina). However, it is our understanding that the returned check fee in BellSouth's South Carolina General Subscriber Services Tariff is $0. If BellSouth is willing to incorporate the $0 returned check fee for South Carolina into the Agreement, the Petitioners would be willing resolve this subissue. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that the Parties use the state-specific returned check fees set forth in BellSouth's General Subscribe Services Tariff, or, in the absence of a rate in the tariff, the amount permitted by state law. As with the late payment interest rate discussed above, BellSouth's proposal would be onerous on Petitioners in that the Petitioners would need to check (and track for changes) BellSouth's state General Subscriber Services Tariff as well as state statutes, in order to validate a returned check fee imposed by BellSouth. Petitioners' billing audit and payment employees should not have to conduct legal research to implement this Agreement. There is a simple and far less burdensome solution available, which is to establish a standard and certain rate in the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 99, Issue No. 7-5 [Section 1.7.1]: What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-5.

A. Petitioners as well as BellSouth should have the right to suspend access to ordering systems and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Termination of services or denial of access to ordering systems is a potentially life-threatening event for CLECs. Petitioners will be unable to conduct business without access to BellSouth ordering systems and customers will lose service if BellSouth terminates their access to services and facilities. Such drastic measures must not be taken, therefore, without following standard procedures set forth in the Agreement. While we understand the need for BellSouth to ensure the integrity of its network, BellSouth should not be able to unilaterally terminate facilities or deny access to ordering systems if there is any dispute as to the unlawfulness or improper use of its network or facilities. The Dispute Resolution provisions of the Agreement must trump any self-help BellSouth may seek to undertake against a Petitioner in such circumstances. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that either Party should have the right to suspend or terminate service to **all** existing services in the event a Party believes the other Party is using **any** of its services or facilities in an unlawful, improper or abusive manner, and such use is not corrected within thirty (30) calendar days. BellSouth's proposed language, however, fails to acknowledge that a CLEC may question or even deny its allegation of unlawful, improper or abusive use and that the Parties may in fact disagree over whether or not such violation has occurred or continues to occur. Instead, BellSouth's proposed language simply provides that it may engage in self-help by terminating services or denying access to ordering systems after providing notice if such alleged improper use is not corrected. Because this outcome is an "end game" for CLECs, BellSouth must be prohibited from engaging in self-help if there is a dispute. Accordingly, the Agreement should require that the Parties adhere to the Dispute Resolution provisions in the event of a dispute regarding use of the other Party's network or facilities. Otherwise, BellSouth will be able to leverage its monopoly power over CLECs by engaging in self-help whereby the remedy imposed by BellSouth significantly would outweigh any infraction (*i.e.,* "lights-out" regardless of how insignificant the infraction and irrespective of whether the CLEC disputes BellSouth's allegations). The Commission should prevent this result as competitors and South Carolina consumers could be irreparably harmed by BellSouth's attempt to secure and exercise "self-help" in a manner that capitalizes on its monopoly legacy and overwhelming market dominance. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 100, Issue No. 7-6 [Section 1.7.2]: Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-6.

A. The answer to the question posed in the issue statement is "NO". CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amount past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a Petitioner receives a notice of suspension or termination from BellSouth, it will be Petitioner's immediate goal to pay the past due amounts included in the notice to avoid suspension and termination. If the Petitioner must attempt to calculate and pay past due amounts in addition to those specified in BellSouth's notice, the Petitioner unfairly will risk suspension or termination due to possible calculation and timing errors. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. COULD YOU PLEASE EXPLAIN WHAT WOULD LIKELY HAPPEN AT YOUR COMPANY UPON RECEIPT OF A NOTICE OF SUSPENSION OR TERMINATION DUE TO NONPAYMENT?

A. Yes, if I or someone at my company received a notice of suspension or termination from BellSouth, it would be nothing less than a "fire drill". Whoever received the notice would immediately work to determine whether such payments were missing, not posted, disputed, or simply due and, in the latter case would arrange to deliver payment to BellSouth as fast as possible. Access to BellSouth's OSS is essential to the daily operation of our company – we take the threat of suspension of such access very seriously. Obviously, the threat of termination is taken very seriously, as well given that would result in massive service outages across our South Carolina customer base. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. UNDER SUCH A SCENARIO, HOW WOULD YOU BE HINDERED IF YOU WERE REQUIRED TO CALCULATE OTHER POSSIBLE PAST DUE AMOUNTS?

A. Under the threat of suspension or termination, our billing personnel would be working as fast as possible to track and pay the amount specified as past due on the suspension or termination notice. Obviously, there is time pressure to perform an investigation into the circumstances and to resolve the matter by identifying any discrepancies and securing payment of the amount specified. Any time or resources that we would have to expend in trying to calculate any possible additional past due amounts that may become past due in the time period between the date on which BellSouth calculated the past due amount (which may or may not be known) and the date on which BellSouth would receive and post payment (which, with respect to posting only, will not be known) would be taken away from time needed to investigate and secure payment of the amount specified on the suspension or termination notice. But, the more significant hindrance is the "shell game"

that would ensue if Petitioner had to guess the precise amount that BellSouth calculated upon receipt and posting of payment that was needed to satisfy the payment of all amounts past due requirement BellSouth seeks to impose. Under that circumstance, only BellSouth can know (and control) the answer to that calculation, as it knows the date upon which it first calculated the past due amount included in the notice and the date upon which it posts receipt of payment. Indeed, under BellSouth's proposal, it could simply delay posting of payment by a day if it was determined to suspend or terminate service. Like many others, this BellSouth proposal seeks unfairly to leverage its monopoly legacy and overwhelming dominance by putting Petitioners in a position that would not be acceptable in a typical commercial setting. The worst part of it, however, is that BellSouth once again proposes to use the specter of consumer affecting service outages as a means of putting CLECs at the mercy of a reluctant seller. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that in response to a notice of suspension or termination, a CLEC must pay not only the amount included in the notice, but all other amounts not in dispute that become past due. BellSouth's proposed language places too much burden and risk on CLECs who are forced to calculate possible past due amounts in addition to those included in the BellSouth notice to avoid suspension or termination of service. As I just explained, BellSouth's proposal amounts to a high stakes shell game that could result in massive service outages for our South Carolina customers, if we fail to properly track, time, trace and predict BellSouth behavior in a manner that allows us to arrive at a

"magic number" needed to avoid suspension or termination. Obviously, such terms and conditions are unreasonable in any setting and especially in this one where consumers' service hangs in the balance. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-7.

A. The maximum amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The CLECs involved in the negotiation process have engaged in tremendous compromise with BellSouth in an attempt to settle deposit issues and limit the issues for arbitration. It is not typical in commercial relationships for one side to continually try to extract deposits from the other. Nevertheless, in trying to settle deposit issues, the Petitioners agreed to language that expands BellSouth's right to collect deposits well beyond what is found in its typical tariffs. In addition to attempting to resolve an issue that has long vexed the Parties (a protracted battle over these issues was played out before the FCC little more than a year ago), the Parties tried, through negotiations, to develop new contract language for deposits uniformly applicable across the 9 state BellSouth region. The primary goals of this exercise were to draft deposit provisions that address BellSouth's asserted need for security deposits with Petitioners' asserted need to limit

tying-up capital in such deposits and to be able to clearly ascertain the circumstances when deposits would be required and returned.

In particular, Petitioners believe that the deposit terms should reflect that each, directly and through its predecessors, has already had a long and substantial business relationship with BellSouth. Accordingly, it is reasonable to treat Petitioners differently from other entities that have no established business relationship with BellSouth. The one and one-half month's actual billing deposit limit for existing CLECs proposed by Petitioners is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance. Moreover, Petitioners believe that it is more generous to BellSouth than terms to which BellSouth has previously agreed. Additionally, the calculations for existing CLECs, which include all the CLECs in this arbitration, should be based on average monthly billings for the most recent six (6) month period. This way, any deposit required by BellSouth will reflect the most recent billing patterns and will eliminate any potential to skew a deposit requirement by using a base timeframe that may not accurately reflect the CLECs' current billing. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposed language establishes a deposit based on an estimated two month's actual billing for existing customers and two month's estimated billing for new customers. BellSouth's language fails to take into account that the CLECs involved in this arbitration have established business relationships with BellSouth with significant billing history. For these reasons, they should not be subject to the same deposit

requirements as new CLEC customers with no established business relationship with BellSouth. Through these negotiations, BellSouth has argued that the Agreement must include deposit provisions that not only work for the these four CLECs, but that will also work for other carriers that may adopt the Agreement. To accommodate BellSouth's position in that this Agreement will likely be adopted by other carriers, the CLEC proposed language includes a separate deposit requirement for existing CLEC customers (one and one-half month's actual billing) as well as new CLEC customers (two month's estimated billing). This dual approach can apply in a reasonable and non-discriminatory manner to both the CLECs involved in the instant case as well as any new carriers that may adopt the final Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-8.

A. The answer to the question posed in the issue statement is "YES". The amount of security due from an existing CLEC should be reduced by amounts due to CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7 of the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As mentioned above, Petitioners have compromised significantly throughout the negotiations of these deposit provisions in order to reach a reasonable and balanced solution that can work throughout the BellSouth territory. As such, the CLECs conceded to give up the right to reciprocal deposits in an effort to settle one potential arbitration issue. But, if Petitioners do not collect deposits they should at least have the ability to reduce the amount of security due to BellSouth by the amounts BellSouth owes CLEC that have aged thirty (30) days or more. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. DOES BELLSOUTH TYPICALLY HAVE SIGNIFICANT BALANCES OWED TO CLECs AGED OVER THIRTY DAYS?

A. Yes, BellSouth does not have a pristine or even good payment record when it comes to paying CLECs the amounts BellSouth owes under its interconnection agreements. Thus, reducing deposit amounts the Petitioners would owe BellSouth is a reasonable means to protect the CLECs' financial interest - as the remainder of the deposit provisions protect BellSouth's financial interests. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not proposed any language on this issue. BellSouth fails to address is the fact that CLECs have no remedy in the security deposit context if BellSouth is late in paying invoices to the CLECs. Since the CLECs suffer financially when payment of invoices are late or not paid in full, but are unable to request security deposits from BellSouth, they should at least be able to reduce the security amount when BellSouth has

failed to make timely payments to CLECs. Furthermore, the CLECs' offset proposal is proper in that once the amount of deposit the CLECs owes BellSouth is decreased by amounts BellSouth has failed to pay the CLECs, the resulting amount will more accurately reflect BellSouth's actual exposure to potential nonpayment. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 103, Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

Q: PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-9.

A. The answer to the question posed in the issue statement is "NO". BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As with numerous other provisions in this Attachment, Petitioners' proposed language counters BellSouth's proposal to "pull the plug" on CLEC service without following the Dispute Resolution provisions of the Agreement. Such self-help actions must be limited to those circumstances where the CLEC agrees that a deposit is required by the Agreement, or the Commission has ordered payment for the deposit. If there is a dispute as to the need or amount of a security deposit, BellSouth must not be able to terminate

service to CLEC without following the Dispute Resolution provisions of the Agreement. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would allow BellSouth to terminate service to CLEC under any circumstance in which CLEC has not remitted a deposit requested by BellSouth within thirty (30) calendar days. Such broad and sweeping language would allow BellSouth to circumvent the Dispute Resolution provisions of the Agreement and simply "pull the plug" on CLEC services even in the event of a valid dispute regarding the required amount of a requested security deposit. BellSouth must be required to follow the Dispute Resolution provisions and the Commission must prevent BellSouth from taking any unilateral self-help action that will ultimately harm or terminate consumers' service. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 104, Issue No. 7-10 [Section 1.8.7]: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-10.

A. If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. It is reasonable to assume that the Parties may disagree as to the need for or required amount of a security deposit (there has been disagreement in the past). In the event of such a dispute that the Parties are unable to reach a negotiated settlement on (which typically has happened in the past), either Party may file a petition for dispute resolution in accordance with the Dispute Resolution provisions set forth in the Agreement. Such action is consistent with how disputes are handled throughout the Agreement and is the purpose of the Dispute Resolution provisions. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language acknowledges that the Parties can file a petition for dispute resolution in the event there is a dispute as to the need and amount of deposit, but BellSouth proposes that the CLECs must post a payment bond for the amount of the requested deposit during the pendency of the dispute resolution proceeding. According to BellSouth's language, posting a bond is a condition to avoid suspension or termination of service during the pendency of the dispute proceeding. This BellSouth bond requirement completely negates the purpose of the Dispute Resolution provisions. If a CLEC is forced to post its funds during the pendency of the dispute resolution proceeding, that unfairly puts the CLEC in the position of losing the dispute (and BellSouth in the position of winning the dispute) before it has been properly adjudicated and resolved. Thus, BellSouth's proposed language would effectively allow BellSouth to override the Dispute Resolution provisions of the Agreement by terminating service to CLEC if CLEC does not post a payment bond for the amount of the requested deposit

that CLEC, in that instance, already would have asserted is not required under the Agreement. Finally, BellSouth's insistence that it be the CLEC that has to file for Dispute Resolution is untenable. As BellSouth would be seeking relief (in the form of deposit), it is BellSouth that should have the burden of filing any complaint that it deems necessary. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 105, Issue No. 7-11 [Section 1.8.9]: Under what conditions may BellSouth seek additional security deposit from CLEC?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-11.

A. Subject to a standard of commercial reasonableness and the standards for deposit requirements set forth in Attachment 7 of the Agreement, BellSouth should be able to seek an additional deposit if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased more than twenty-five (25) percent beyond the level most recently used to determine the level of deposit. Further, BellSouth should not be entitled to make such additional requests based solely on increased billing more frequently than once in any six (6) month period. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Agreement should include specific benchmarks under which BellSouth can request additional security deposits from CLECs. Otherwise, there will likely be numerous disputes and never-ending discussions between the Parties over whether additional security is required. It would be commercially unreasonable for a CLEC to have to pay

additional security to BellSouth if the CLEC's monthly billing increases, say two (2) or three (3) percent. It is, however, reasonable to increase the security amount if the CLEC monthly billing increases by twenty-five (25) percent or more. To the extent BellSouth may seek additional security due to increased billing, the Agreement must establish a cap on the amount of times that BellSouth can request an increase in security. If not, BellSouth may continually burden CLECs with repeated requests for increased security. CLECs should not have to endure requests for additional security more than once every six (6) months. Under Petitioners' proposed language, BellSouth has sufficient opportunity to protect its financial interest without placing excessive time and resource burdens on Petitioners. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that it may seek additional security if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased beyond the level most recently used to determine the level of security deposit. BellSouth's proposed language does not provide any limit on its ability to request additional security. In an event to settle deposit issues, the CLECs agreed to a "material change" benchmark which the Parties agreed would cover bankruptcy filings and similar instances. Since the CLECs agreed to a "material change" standard in an attempt reach agreement, BellSouth should be agreeable to a more precise twenty-five (25) percent increase in billing standard. The two standards, together, provide a balanced approach to deposits that adequately protect both Parties and achieve reasonable business certainty so

that the Parties will avoid likely disputes over this issue. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 106, Issue No. 7-12 [Section 1.9.1]: To whom should BellSouth be required to send the 15-day notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-12.

A. Notice of suspension for additional applications for service, pending applications for service, and access to BellSouth's ordering systems should be sent to CLECs pursuant to the requirements of Attachment 7 and also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Parties have agreed, in the General Terms and Conditions, to identify a person to receive notices under the Agreement. Specifically, Section 24.1 of the General Terms and Conditions states, "[e]very notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by U.S. Mail postage prepaid, addressed to: [identified CLEC/BellSouth recipient]." This provision is not in dispute and it was agreed to without exception. Access to BellSouth ordering systems is part of the Agreement and is fundamental to a CLEC's business. Nevertheless, BellSouth proposes that a notice of suspension for applications for services as well as access to ordering systems only be sent to the CLEC billing contact and not also to the notice receipt set forth in the General

Terms and Conditions Petitioners are unwilling to agree to such an exception. A notice of suspension of access to ordering systems is too important to a CLEC's business to be sent only to the billing contact who likely is buried in bills from BellSouth and other vendors. The very purpose of including a notice recipient in the General Terms and Conditions is to provide a central person to receive all notices of importance to the implementation of the Agreement. As stated, there is almost no notice more important than one that will potentially terminate a CLEC's access to ordering systems. The notice provision included in the General Terms and Conditions was drafted to address this exact type of notice, one of dire consequence to CLECs if not addressed immediately. Therefore, BellSouth must not be allowed to create an exception to the rule for this type of suspension notice. Accordingly, the Commission should find that BellSouth must provide notice of suspension of access to BellSouth's ordering systems to the billing contact as well as the notice recipient identified in the General Terms and Conditions. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that an initial notice that a CLEC's applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of outstanding amounts are not paid by the fifteenth (15th) calendar day following the date of the notice is system generated and will only be supplied to CLEC's billing contact. As mentioned previously, access to ordering systems is vital to a CLEC's business and it is imperative that such a notice will be provided to the billing contact but also to the

legal/regulatory/carrier relations contact or contacts identified in the General Terms and Conditions of this Agreement. Even if such notice is system generated, there is no valid reason why BellSouth cannot ensure that the same notice is also provided to the notice recipient(s) identified in the General Terms and Conditions. The issues of access to OSS and UNE provisioning are too important for BellSouth not to do so. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)

(ATTACHMENT 11)

Item No. 107, Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]:
(A) Should BellSouth be permitted to charge CLEC the full development costs associated with a BFR?
(B) If so, how should these costs be recovered?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 11-1(A).

A. The answer to the question posed in the issue statement is "NO." CLECs should not be charged the full development costs for a new service or modified network element ordered via the BFR process. Rather, the charges associated with the development should be apportioned among various CLECs that may benefit from the new service or network element. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. When BellSouth develops a new or modified UNE, interconnection or collocation offering via the BFR process, not only will the CLEC requesting the BFR benefit from the development of that new or modified offering, but other CLECs, who subsequently purchase the new/modified service or UNE, will benefit from the development as well.

Accordingly, the CLEC that requested the BFR should not be required to bear the entire burden of the development costs of a service or element that may benefit a substantial part of the CLEC community as well as South Carolina consumers. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require the CLEC requesting the BFR to pay the full development costs for the resulting new service or modified network element. BellSouth argues that it is entitled to recover its costs in provisioning services to CLEC, and BellSouth further argues that the CLEC making a BFR is making a unique request to BellSouth, and therefore that CLEC should bear the full development costs. What BellSouth fails to address is that other CLECs will likely purchase the new service or modified network element and will not bear any of the development costs. This would put the CLECs who subsequently purchase the new service or element at a financial advantage over the CLEC requesting the BFR, as they did not have to pay any of the development costs, but reap the benefit of the new or modified offering. In other words, BellSouth's proposal creates a first-mover penalty that threatens to inhibit innovation and new service offerings from which consumers could greatly benefit. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY SHOULD DEVELOPMENT COSTS BE ASSESSED DIFFERENTLY FOR A BFR THAN A NBR?

A. The BFR process, as defined in the Agreement, is utilized when BellSouth is requested to provide a new or modified network element, interconnection option or other service

option pursuant to the Act that was not previously provided for in the Agreement. On the other hand, the NBR process is utilized when a CLEC requests a new service, or element that is not required by the Act. I understand that if my company requests a new service or network element that BellSouth is not required to provide pursuant to the Act, it would be my company's responsibility to pay for the development of that new service or product.

With the BFR process, however, a CLEC has requested that BellSouth develop a service or modified network element that it is legally obligated to provide. BellSouth must make such service and/or network element available to all CLECs and, therefore, the development costs should be apportioned to all CLECs that would benefit from the service and network element. To do otherwise, would unjustly force the first CLEC who requests a new service or element to bear all the development costs, while all the CLECs who subsequently purchase the new service or element get a "free ride" on the development. Furthermore, if a CLEC is required to bear all the development costs, a new service or modified network element that would benefit the CLEC community and enhance competition in South Carolina may not get developed as it could be cost prohibitive for a CLEC to engage in the BFR process. Ultimately it is the consumers that would lose out from the lack of new and innovative competitive services deployed in South Carolina. To avoid this result, the Commission should find that all CLECs in South Carolina would benefit from a new service or element development through the BFR and therefore direct BellSouth to establish a cost structure whereby the development costs can be apportioned among the CLECs that benefit from the new service or modified

network element. *[Sponsored by **3 CLECs:** M. Johnson (KMC) H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 11-1(B).

A. To the extent that BellSouth can charge the requesting CLEC for the development costs associated with the BFR, such costs should be assessed though the nonrecurring and recurring rates for the service or modified network element. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a CLEC must bear the burden paying the development costs for a new service or modified network element resulting from the BFR process, such costs should be included (i.e., distributed) in the rates for the new service or element through the nonrecurring and recurring charges for that new service or modified network element. The CLEC requesting the BFR should not be required to pay the full development costs in one lump sum in order for BellSouth to process the BFR. Rather, the development costs should be spread out through the nonrecurring and recurring charges the CLEC must pay for use of the service or network element. If the first-mover CLEC is indeed to be penalized, BellSouth should be required to make downward adjustments to any nonrecurring and recurring charges once it has recovered its development costs. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require the CLEC to pay all the development costs up front as a condition to BellSouth processing the BFR. BellSouth's proposal is

unsatisfactory because a CLEC should not be required to incur the significant expense for the development of a service or network element before the service or network element is available. Rather, BellSouth should assess development charges through the nonrecurring and recurring rates, as it does for all other UNEs and related services in the Agreement.

To the extent that development costs for a particular UNE or service are assessed on a CLEC via the nonrecurring and recurring charges, there are compelling reasons why such costs should be recovered through recurring charges. The key distinguishing characteristic between the costs that should be recovered in recurring charges and those that can be recovered in nonrecurring charges is whether the cost is associated with facilities that will be used to provide service to subsequent customers without change. Based on this test, no development costs belong in the nonrecurring charges for UNEs because all of the development costs are for facilities will be used to provide service to both current and future customers.

Moreover, while the incidence of development costs may be a one-time event, that circumstance does not change the basic fact that the cost is properly treated as a recurring charge. Proper identification of one-time costs is particularly important in a competitive environment where more than one local exchange carrier, including the incumbent, may use a particular facility at different points in that facility's economic life. If the first telecommunications provider to use the facility bears all the forward-looking costs of a one-time activity that benefits multiple users, then obviously the first user will be forced to pay more than its fair share. Current customers should not subsidize the costs of

providing plant for future customers. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

EXHIBIT A

DISPUTED CONTRACT LANGUAGE BY ISSUE

GENERAL TERMS AND CONDITIONS

Item No. 1, Issue No. G-1 [Section 1.6]: What should be the effective date of future rate impacting amendments?

1.6 [CLEC Version] **Effective Date** is defined as the date that the Agreement is effective and shall be ten (10) calendar days after the date of the last signature executing the Agreement. Non rate impacting future amendments will be effective as of the date of the last signature executing the amendment or as otherwise ordered in a FCC or Commission order or rule. Future amendments incorporating Commission-approved rates will be effective **as of the effective date of the Commission order or as otherwise ordered in a FCC or Commission order or rule, if an amendment is requested within thirty (30) calendar days of that date. Otherwise, such amendments shall be effective ten (10) calendar days after the date of the last signature executing the amendment or, or thirty (30) calendar days after request, whichever date is earlier**.

[BellSouth Version] **Effective Date** is defined as the date that the Agreement is effective and shall be ten (10) calendar days after the date of the last signature executing the Agreement. Non rate impacting future amendments will be effective as of the date of the last signature executing the amendment or as otherwise ordered in a FCC or Commission order or rule. Future amendments incorporating rates changes will be effective **ten (10) calendar days after the date of the last signature executing the amendment or as otherwise ordered in a FCC or Commission order or rule**.

Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?

1.7 [CLEC Version] **End User** means the **customer of a Party**.

[BellSouth Version] **End User** means the **ultimate user of the Telecommunications Service**.

Item No. 3, Issue No. G-3 [Section 10.2]: Should the Agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible CLEC revenue in addition to specific provisions set forth in Attachments 3 and 7?

10.2 [CLEC Version] **BellSouth shall take financial responsibility for its own actions in causing or contributing to unbillable or uncollectible <<customer_short_name>> revenue.**

[BellSouth Version] **No Section.**

Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

10.4.1 [CLEC Version] Except for any indemnification obligations of the Parties hereunder, **with respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by either Party, any End User of either Party, or by any other person or entity, for damages associated with any of the services provided pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and, in any event, subject to the provisions of the remainder of this Section,** each Party's liability **shall be limited** to **and shall not exceed in aggregate amount over the entire term hereof an amount equal to seven-and-one half percent (7.5%) of the aggregate fees, charges or other amounts paid or payable to such Party for any and all services provided or to be provided by such Party pursuant to this Agreement as of the Day immediately preceding the date of assertion or filing of the applicable claim or suit; provided that the foregoing provisions shall not be deemed or construed as (A) imposing or allowing for any liability of either Party for (x) indirect, special or consequential damages as otherwise excluded pursuant to Section 10.4.4below or (y) any other amount or nature of damages to the extent resulting directly and proximately from the claiming Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to all applicable damages or (B) limiting either Party's right to recover appropriate refund(s) of or rebate(s) or credit(s) for fees, charges or other amounts paid at Agreement rates for** services not performed or **provided or otherwise failing to comply (with applicable refund, rebate or credit amounts measured by the diminution in value of services reasonably resulting from such noncompliance) with the applicable terms and conditions of this Agreement. Notwithstanding the foregoing, claims or suits for damages by either Party, any End User of either Party, or by any other person or entity, to the extent resulting from the gross negligence or willful misconduct of the other Party, shall not be subject to the foregoing limitation of liability.**

[BellSouth Version] Except for any indemnification obligations of the Parties hereunder, **and except in cases of the provisioning Party's gross negligence or willful misconduct,** each Party's liability to **the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort,** shall be limited to **a credit for the**

actual cost of the services **or functions** not performed or **improperly performed.**

Item No. 5, Issue No. G-5 [Section 10.4.2]: To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not limited?

10.4.2 [CLEC Version] **No Section.**

[BellSouth Version] **Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.**

Item No. 6, Issue No. G-6 [Section 10.4.4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?

10.4.4 [CLEC Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages **provided that neither the foregoing nor any other provision of this Section 10 shall be deemed or construed as imposing any limitation on the liability of a Party for claims or suits for damages incurred by End Users of the other Party or by such other Party vis-à-vis its End Users to the extent such damages result directly and in a reasonably foreseeable manner from the first Party's performance of services hereunder and were not and are not directly and proximately caused by or the result of such Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage.** In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

[BellSouth Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

Item No. 7, Issue No. G-7 [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?

10.5 [CLEC Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim **for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications**. **The Party receiving services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party providing services hereunder against any claim, loss or damage to the extent arising from (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent caused by the providing Party's negligence, gross negligence or willful misconduct.**

[BellSouth Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim**, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims** for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications**, or (2)** any claim, loss or damage **claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations** arising out of this Agreement.

Item No. 8, Issue No. G-8 [Section 11.1]: What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logos and trademarks?

11.1 [CLEC Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **A Party's use of the other Party's name, service marks and trademarks shall be in accordance with Applicable Law.**

[BellSouth Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. Notwithstanding the foregoing, <<customer_short_name>> may make factual references to the BellSouth name as necessary to respond to direct inquiries from customers or potential customers regarding the source of the underlying services or the identity of repair technicians. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.**

Item No. 9, Issue No. G-9 [Section 13.1]: Should a court of law be included in the venues available for initial dispute resolution?

13.1 [CLEC Version] Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the FCC, the Commission **or a court of law** for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses. Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC**,** the Commission **or a court of law** concerning this Agreement. Until the dispute is finally resolved, each Party shall continue to perform its obligations under this Agreement, unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute provided however, that neither Party shall be required to act in any unlawful fashion.

[BellSouth Version] Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, if a Party desires to pursue such dispute, such Party shall petition the FCC or the Commission for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses. Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC or the Commission concerning this Agreement. Until the dispute is finally resolved, each Party shall continue to perform its obligations under this Agreement, unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute provided however, that neither Party shall be required to act in any unlawful fashion.

Item No. 12, Issue No. G-12 [Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

32.2 [CLEC Version] **Nothing in this Agreement shall be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Silence shall not be construed to be such a limitation or exemption with respect to any aspect, no matter how discrete, of Applicable Law.**

[BellSouth Version] **This Agreement is intended to memorialize the Parties' mutual agreement with respect to their obligations under the Act and applicable FCC and Commission rules and orders. Any reference to the Parties complying with applicable FCC and Commission orders is not intended to expand on the obligations of the Parties as set forth herein.**

Item No. 13, Issue No. G-13 [Section 32.3]: How should the Parties deal with non-negotiated deviations from the state Commission- approved rates in the rate sheets attached to the Agreement?

32.3 [CLEC Version] **The rates contained in this Agreement shall be in compliance with Applicable Law.** Where a Commission has adopted rates for network elements or services provided under this Agreement, as of the Effective Date, it is the intent of the Parties that the rate exhibits incorporated into this Agreement will be those rates. Errors in rate sheets will be corrected **by retroactive true-up to the Effective Date within thirty (30) calendar days**.

[BellSouth Version] Where a Commission has adopted rates for network elements or services provided under this Agreement, as of the Effective Date, it is the intent of the Parties that the rate exhibits incorporated into this Agreement will be those rates, unless otherwise negotiated by the Parties. Upon request of either Party, errors in rate sheets will be corrected **prospectively by amendments to this Agreement**.

Item No. 14, Issue No. G-14 [Section 34.2]: Can either Party require, as a prerequisite to performance of its obligations under the Agreement, that the other Party adhere to any requirement other than those expressly stipulated in the Agreement or mandated by Applicable Law?

34.2 [CLEC Version] **Neither Party shall, as a condition or prerequisite to such Party's performance of its obligations as otherwise provided herein, impose or insist upon the other Party's (or any of its End Users') adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law.**

[BellSouth Version] **No Section.**

Item No. 15, Issue No. G-15 [Section 45.2]: If BellSouth changes a provision of one or more of its Guides that would cause CLEC to incur a material cost or expense to implement the change, should the CLEC notify BellSouth, in writing, if it does not agree to the change?

45.2 [CLEC Version] Guides. The Parties acknowledge that certain provisions of this Agreement reference certain BellSouth documents and publications (collectively referred to herein as the "Guides"). All Guides referred to in this Agreement, are incorporated herein and made a part hereof by reference. To the extent that there is a conflict between a provision of a Guide and a provision of this Agreement, the provision of this Agreement shall prevail. BellSouth may, from time to time during the term hereof, change or alter said Guides (including replacing a Guide entirely with a successor Guide with a different name). The Parties agree that if the change or alteration was made to BellSouth's OSS interface Guides as a result of the Change Control Process (CCP), a revision to a generally accepted and implemented industry standard or guideline (e.g. Ordering Billing Forum (OBF), Telcordia guidelines, etc.), or other legal requirement directly affecting the Guides provided, if such legal requirement would be subject to the change of law provision in these General Terms and Conditions, the change to the Guide would not be applicable until this Agreement is amended to reflect the update to the Guide, or if <<customer_short_name>> agrees to such change or alteration, any such change or alteration shall become effective as specified in the terms of the notice to <<customer_short_name>> via the applicable Internet website posting. In all other cases, a change in a Guide which (1) alters, amends or conflicts with any term of this Agreement; (2) changes any charge or rate, or the application of any charge or rate, specified in this Agreement; (3) adds a new rate or rate element not previously specified in the Agreement; (4) causes <<customer_short_name>> to incur material cost or expense to implement the change or alteration; or (5) increases an interval set forth in this agreement, will

not be effective with respect to <<customer_short_name>> until BellSouth and <<customer_short_name>> sign an amendment to this Agreement reflecting the changes described in items (1), (2), (3)**, (4)** or (5). For purposes of item (4), a cost or expense shall be deemed material if it imposes a financial burden on <<customer_short_name>>, but shall not include costs associated with disseminating notice of the change or providing training regarding the change to employees. In addition, BellSouth will use its best efforts, upon <<customer_short_name>>'s request to BellSouth's Interconnection Services (ICS) website group at wmag@bellsouth.com, to provide such notices via e-mail to the address specified by <<customer_short_name>>.

In the event that the Parties disagree as to whether any alteration or amendment described in this Section is effective as to <<customer_short_name>> pursuant to the requirements of this Section, either Party may, at its option, seek resolution of the dispute in accordance with the Dispute Resolution provisions in the General Terms and Conditions of this Agreement. In cases where there is a dispute with respect to any alteration or amendment described in this Section becoming effective as to <<customer_short_name>>, such alteration or amendment described in this Section shall not become effective as to <<customer_short_name>> until there is mutual agreement between the Parties that it should become effective or an order resulting from the Dispute Resolution process finding in favor of its becoming effective.

[BellSouth Version] Guides. The Parties acknowledge that certain provisions of this Agreement reference certain BellSouth documents and publications (collectively referred to herein as the "Guides"). All Guides referred to in this Agreement, are incorporated herein and made a part hereof by reference. To the extent that there is a conflict between a provision of a Guide and a provision of this Agreement, the provision of this Agreement shall prevail. BellSouth may, from time to time during the term hereof, change or alter said Guides (including replacing a Guide entirely with a successor Guide with a different name). The Parties agree that if the change or alteration was made to BellSouth's OSS interface Guides as a result of the Change Control Process (CCP), results from a revision to a generally accepted and implemented industry standard or guideline (e.g. Ordering Billing Forum (OBF), Telcordia guidelines, etc.), or other legal requirement directly affecting the Guides provided, if such legal requirement would be subject to the change of law provision in these General Terms and Conditions, the change to the Guide would not be applicable until this Agreement is amended to reflect the update to the Guide, or if <<customer_short_name>> agrees to such change or alteration, any such change or alteration shall become effective as specified in the terms of the notice to <<customer_short_name>> via the applicable Internet website posting. In all other cases, a change in a Guide which (1) alters, amends or conflicts with any term of this Agreement; (2) changes any charge or rate, or the application of any charge or rate, specified in this Agreement; (3) adds a new rate or rate element not previously specified in the Agreement; (4) causes <<customer_short_name>> to incur material cost or

expense to implement the change or alteration; or (5) increases an interval set forth in this agreement, will not be effective with respect to <<customer_short_name>> until BellSouth and <<customer_short_name>> sign an amendment to this Agreement reflecting the changes described in items (1), (2), (3) or (5)**; or unless <<customer_short_name>> fails to inform BellSouth in writing that it does not agree to such change or alteration within thirty (30) calendar days of notice of such change being given to <<customer_short_name>> for item (4)**. For purposes of item (4), a cost or expense shall be deemed material if it imposes a financial burden on <<customer_short_name>>, but shall not include costs associated with disseminating notice of the change or providing training regarding the change to employees. In addition, BellSouth will use its best efforts, upon <<customer_short_name>>'s request to BellSouth's Interconnection Services (ICS) website group at wmag@bellsouth.com, to provide such notices via e-mail to the address specified by <<customer_short_name>>.

In the event that the Parties disagree as to whether any alteration or amendment described in this Section is effective as to <<customer_short_name>> pursuant to the requirements of this Section, either Party may, at its option, seek resolution of the dispute in accordance with the Dispute Resolution provisions in the General Terms and Conditions of this Agreement. In cases where there is a dispute with respect to any alteration or amendment described in this Section becoming effective as to <<customer_short_name>>, such alteration or amendment described in this Section shall not become effective as to <<customer_short_name>> until there is mutual agreement between the Parties that it should become effective or an order resulting from the Dispute Resolution process finding in favor of its becoming effective.

Item No. , Issue No. G-16 [Section 45.3]: If a tariff is referenced in the Agreement, what effect should subsequent changes to the tariff have on the Agreement?

45.3 [CLEC Version] In various provisions of this Agreement, the Parties have included references to tariffs filed by the Parties. If such tariff is referenced for the purposes of a service that is provisioned pursuant to such tariff, and there is a conflict between such referenced tariff provisions and this Agreement, the terms of the tariff shall control. If the service is provisioned pursuant to this Agreement but the tariff is referenced for a rate, an interval or another purpose, to the extent that there is a conflict between such referenced tariff provision and this Agreement, and except as otherwise set forth in this Agreement, the terms of this Agreement shall prevail. **To the extent a Party alleges that changes made to such tariffs subsequent to the Effective Date are unreasonable and discriminatory, the Parties shall endeavor to negotiate a resolution and incorporate such resolution into this Agreement by written amendment. To the extent that the Parties are unable to reach such resolution or agree on an amendment, the dispute shall be resolved in accordance with the Dispute Resolution provisions set forth in Section 13 above.**

[BellSouth Version] In various provisions of this Agreement, the Parties have included references to tariffs filed by the Parties. If such tariff is referenced for the purposes of a service that is provisioned pursuant to such tariff, and there is a conflict between such referenced tariff provisions and this Agreement, the terms of the tariff shall control. If the service is provisioned pursuant to this Agreement but the tariff is referenced for a rate, an interval or another purpose, to the extent that there is a conflict between such referenced tariff provision and this Agreement, and except as otherwise set forth in this Agreement, the terms of this Agreement shall prevail.

ATTACHMENT 2

NETWORK ELEMENTS AND OTHER SERVICES

Item No. 22, Issue No. 2-4 [Section 1.4.3]: (A) Should CLEC be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services? (B) In the event of such conversion, what rates should apply?

1.4.3 [CLEC Version] If <<customer_short_name>> wants to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services <<customer_short_name>> shall submit a spreadsheet (and a commingling ordering document that indicates which part is to be filled as a UNE, if applicable). **There will be no charges for the conversion (disconnect, billing change and nonrecurring charges will not apply).**

[BellSouth Version] If <<customer_short_name>> wants to convert a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services <<customer_short_name>> shall submit a spreadsheet (and a commingling ordering document that indicates which part is to be filled as a UNE, if applicable). **There will be no charges for the conversion itself**.

Item No. 23, Issue No. 2-5 [Section 1.5]: (A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, which Party should bear the obligation of identifying those service arrangements? (B) What recourse may BellSouth take if CLEC does not submit a rearrange or disconnect order within 30 days? (C) What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?

1.5 [CLEC Version] Except to the extent expressly provided otherwise in this Attachment, for UNEs or Combinations that are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, <<customer_short_name>> will submit orders to rearrange or disconnect those arrangements or services within thirty (30) calendar days of **its receipt of notice from BellSouth identifying specific service arrangements that must be transitioned to other services pursuant to this Section**. If orders to rearrange or disconnect those arrangements or services are not received by the thirty-first (31st) calendar day after **receipt of such notice**, BellSouth may disconnect those arrangements or services without further notice, **provided that <<customer_short_name>> has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered**

pursuant to, or are not in compliance with, the terms set forth in this Agreement. Where no re-termination or physical rearrangement of circuits or service is required, <<customer_short_name>> will be charged a nonrecurring switch-as-is charge for the individual Network Element(s) as set forth in Exhibit A of this Attachment. For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of this Agreement, nonrecurring charges for the applicable **UNE or cross connect** from Exhibit A of this Attachment will apply. To the extent re-termination or other physical rearrangement is required in order to comply with a tariff or separate agreement, the applicable rates, terms and conditions of such tariff or separate agreement shall apply.

[BellSouth Version] **To the extent any Network elements, combinations of Network Elements, services or terms and conditions contained herein are based upon FCC rules and orders that are vacated as a result of the DC Circuit Court of Appeals' Opinion issued on March 2, 2004 and an effective order ("Vacatur Order"), such Network Elements, combinations of Network Elements and services shall no longer be available pursuant to the terms, conditions and rates of this Agreement ("Vacated Element(s)"), except as set forth in this Section 1.5. Upon the effective date of the Vacatur Order and written notice by BellSouth issued on or after the effective date of the Vacatur Order ("Initial Notice"), <<customer_short_name>> will not order any Vacated Elements. BellSouth and <<customer_short_name>> will work cooperatively to transition the embedded base of Vacated Elements to either Resale, tariffed services or services offered pursuant to a separate commercial agreement ("Comparable Services").**

Within five (5) calendar days of BellSouth's Initial Notice, <<customer_short_name>> will advise BellSouth in writing to the person identified in the Notices Section of the General Terms and Conditions via electronic mail or facsimile, whether <<customer_short_name>> disagrees that a specific Network Element is a Vacated Element. In the event, <<customer_short_name>> disputes whether a specific Network Element is a Vacated Element ("Disputed Network Element"), BellSouth may seek expedited resolution of such dispute in the appropriate forum; provided, however, that if BellSouth does not pursue resolution of such dispute within ten (10) calendar days of <<customer_short_name>>'s notice, <<customer_short_name>> may seek expedited resolution of such dispute in the appropriate forum. In the event of such a dispute, <<customer_short_name>> may not order Disputed Vacated Elements pursuant to this Agreement; provided, however, if <<customer_short_name>> has purchased a Disputed Network Element as a wholesale service pending such resolution and the dispute is resolved in <<customer_short_name>>'s favor, upon request of <<customer_short_name>> within thirty (30) calendar days of an effective order resolving the dispute, BellSouth shall convert such element from

wholesale to Network Element without any charge to <<customer_short_name>> for the difference between the wholesale non-recurring and monthly recurring rates paid by <<customer_short_name>> and the Network Element non-recurring and monthly recurring rates that would have been charged to <<customer_short_name>> by BellSouth. In the event of such dispute, <<customer_short_name>> shall not be required to transition the Disputed Network Elements as set forth herein unless the dispute is resolved in BellSouth's favor, in which case <<customer_short_name>> must transition the Disputed Network Elements within the time frames set forth herein measured from the date of an effective order and <<customer_short_name>> shall reimburse BellSouth for the difference between the recurring charges that would have applied for the Comparable Services for the period after the date of the Initial Notice in addition to the applicable tariff charges and applicable disconnection charges under this Agreement. For those Vacated Elements that <<customer_short_name>> does not dispute, the transition process shall begin on the date of BellSouth's Initial Notice under this Agreement.

Switching Vacated Elements. In the event <<customer_short_name>> has entered into a separate agreement for switching or services that include switching that are Vacated Elements but that are provided under this Agreement as of the date of the Vacatur Order, those switching Vacated Elements shall be transitioned pursuant to such separately negotiated agreement. In the event that <<customer_short_name>> has not entered into a separate commercial agreement for the provision of switching Vacated Elements, <<customer_short_name>> will submit orders to either disconnect such switching Vacated Elements or convert such switching Vacated Elements to Resale within thirty (30) calendar days of BellSouth's Initial Notice and the Resale rates, terms and conditions shall apply from the date of the order completion. If <<customer_short_name>> fails to submit orders to transition such switching Vacated Elements from this Agreement within thirty (30) calendar days of BellSouth's Initial Notice, BellSouth shall provide thirty (30) calendar days notice that <<customer_short_name>> must submit orders to disconnect or transition such switching Vacated Elements or BellSouth shall transition such Vacated Elements to Resale and shall retroactively charge the Resale rate to the day of BellSouth's Initial Notice and shall retroactively charge the Resale rate to the day of BellSouth's Initial Notice and any applicable disconnect charge as set forth in Exhibit B of this Attachment. In such case, <<customer_short_name>> shall reimburse BellSouth for labor incurred and appropriate conversion and disconnection charges shall apply.

<u>Other Vacated Elements</u>. For the embedded base of Vacated Elements, excluding switching Vacated Elements, to be transitioned to a Comparable Service, <<customer_short_name>> will identify and submit orders (via a spreadsheet process where <<customer_short_name>> purchases a minimum of fifteen (15) circuits per state) within forty-five (45) calendar

days of BellSouth's Initial Notice. Such Orders will be project managed. The rates, terms and conditions of the Comparable Service to which such Vacated Elements are to be transitioned will be effective upon receipt of the order/spreadsheet as applicable. To the extent <<customer_short_name>> identifies and submits an order, whether via spreadsheet or the access services request/local services request (ASR/LSR) process, to replace a Vacated Element with a BellSouth Comparable Service within the forty-five calendar day time frame, BellSouth agrees to waive the associated Network Element disconnect charge.

If <<customer_short_name>> fails to identify and submit orders for any of the embedded base of such Vacated Elements within forty-five (45) calendar days of BellSouth's Initial Notice, BellSouth will identify those Vacated Elements and notify ("Second Notice") <<customer_short_name>> of the Vacated Elements for which <<customer_short_name>> needs to submit orders to disconnect or transition the embedded base of Vacated Elements and BellSouth shall notify <<customer_short_name>> of any Vacated Elements for which there is no comparable tariff service. <<customer_short_name>> must submit such orders within thirty (30) calendar days of BellSouth's Second Notice. If <<customer_short_name>> identifies and submits orders for at least 95% of its embedded base within the forty-five (45) calendar days of BellSouth's Initial Notice, <<customer_short_name>> will not be required to reimburse BellSouth for the labor to identify those Vacated Elements. In all other cases, <<customer_short_name>> shall reimburse BellSouth for labor incurred in identifying such Vacated Elements. The rates, terms and conditions associated with the Comparable Service to which <<customer_short_name>> transitions Vacated Elements via orders placed pursuant to BellSouth's Second Notice will apply and will be retroactively charged to the date of BellSouth's Initial Notice.

If <<customer_short_name>> fails to submit orders to transition such Vacated elements from this Agreement within thirty (30) calendar days of BellSouth's Second Notice, BellSouth will replace such Vacated Elements with comparable tariffed services as BellSouth deems appropriate, and the rates, terms and conditions for that tarffied service shall apply. This rate will be applied retroactively to the date of BellSouth's Initial Notice. <<customer_short_name>> shall reimburse BellSouth for labor incurred in identifying such Vacated Elements and the associated Network Element disconnect charge. If no comparable tariff exists, BellSouth may disconnect such Vacated Elements.

Item No. 25, Issue No. 2-7 [Section 1.6.1]: What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?

1.6.1 [CLEC Version] BellSouth will perform Routine Network Modifications in accordance with FCC 47 C.F.R. 51.319 (a)(8) and (e)(5). If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations, then BellSouth shall perform such Routine Network Modifications at no additional charge. Routine Network Modifications shall be performed within the intervals established for the UNE and subject to the performance measurements and associated remedies set forth in Attachment 9 to the extent such Routine Network Modifications were anticipated in the setting of such intervals. If BellSouth has not anticipated a requested **or necessary** network modification as being a Routine Network Modification and, as such, has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of this Attachment, then **BellSouth shall notify <<customer_short_name>> of the required Routine Network Modification and shall request that** <<customer_short_name>> submit a service inquiry (SI) to have the work performed. Each **unique** request will be handled as a project on an individual case basis. BellSouth will provide a **TELRIC-compliant** price quote for the request, and upon receipt of a **firm order** from <<customer_short_name>>, BellSouth shall perform the Routine Network Modification.

[BellSouth Version] BellSouth will perform Routine Network Modifications in accordance with FCC 47 C.F.R. 51.319 (a)(8) and (e)(5). **If BellSouth identifies a Routine Network Modification that is necessary in order for BellSouth to provision the Network Element, BellSouth shall advise <<customer_short_name>> and <<customer_short_name>> may request such Routine Network Modification.** If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations **and such function was included in BellSouth's cost studies that, through Commission proceedings or agreement by the Parties resulted in rates set forth in Exhibit A of this Attachment**, then BellSouth shall perform such Routine Network Modifications at no additional charge**.** Routine Network Modifications shall be performed within the intervals established for the UNE and subject to the performance measurements and associated remedies set forth in Attachment 9 to the extent such Routine Network Modifications were anticipated in the setting of such intervals. If BellSouth has not anticipated a requested network modification as being a Routine Network Modification and has not recovered the costs of such Routine Network Modification in the rates set forth in Exhibit A of this Attachment, then <<customer_short_name>> must submit a service inquiry (SI) to have the work performed. Each request will be handled as a project on an individual case basis **until such time as BellSouth incorporates such Routine Network Modification into its normal operations and develops a charge for**

such Routine Network Modification that is included in this Agreement by Amendment hereto. BellSouth will provide a price quote for the request, and upon receipt of **payment** from <<customer_short_name>>, BellSouth shall perform the Routine Network Modification. **If <<customer_short_name>> believes that BellSouth's firm price quote is not consistent with the requirements of the Act, either Party may seek dispute resolution in accordance with the dispute resolution provisions set forth in the General Terms and Conditions of this Agreement. Any such arbitration applicable to network element, interconnection option and/or service option pricing shall be conducted in accordance with standards prescribed in Sections 251 and 252 of the Act. While the dispute is pending, <<customer_short_name>> shall have the option of requesting BellSouth to provide the network element, interconnection option or service option subject to a retroactive pricing true up upon an effective Commission order resolving the dispute. The Parties agree that subsequent true-ups may result from multiple rounds of appellate or reconsideration decisions, should the relevant Party pursue such appeals/reconsiderations/review and prevail. BellSouth will provide a cost study upon request after the firm quote.**

Item No. 26, Issue No. 2-8 [Section 1.7]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

1.7 [CLEC Version] Notwithstanding any other provision of this Agreement, BellSouth will not combine UNEs or Combinations with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

[BellSouth Version] Notwithstanding any other provision of this Agreement, BellSouth will not **commingle or** combine UNEs or Combinations with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

Item No. 27, Issue No. 2-9 [Section 1.8.3]: When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?

1.8.3 [CLEC Version] When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment **and Central Office Channel Interfaces** will be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service.

[BellSouth Version] When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the **higher bandwidth service. The Central Office Channel Interface will be billed from the same jurisdictional authorization (tariff or agreement) as the lower bandwidth service.**

Item No. 28, Issue No. 2-10 [Section 1.9.4]: Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?

1.9.4 [CLEC Version] Fractionalized billing shall apply to all UNEs and Combinations such that recurring charges will be prorated based upon the number of days that the UNEs are in service. Non-recurring charges shall not be fractionalized.

[BellSouth Version] **After the minimum billing period has been attained**, fractionalized billing shall apply to all UNEs and Combinations such that recurring charges will be prorated based upon the number of days that the UNEs and Combinations are in service. Non-recurring charges shall not be fractionalized.

Item No. 30, Issue No. 2-12 [Section 2.1.1.1]: Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center or base station do not constitute loops?

2.1.1.1 [CLEC Version] **No Section.**

[BellSouth Version] **For the purposes of this Agreement, and not by way of limitation, the phrase 'end user customer premises' shall not be interpreted to include such places as a carrier's mobile switching center, base station, cell site, or other similar facility, except to the extent that a carrier may require loops to such locations for the purpose of providing telecommunications services to its personnel at those locations.**

Item No. 31, Issue No. 2-13 [Section 2.1.1.2]: Should the Agreement require CLEC to purchase the entire bandwidth of a Loop, in all situations?

2.1.1.2 [CLEC Version] <<customer_short_name>> shall purchase the entire bandwidth of the Loop and, except as required herein **or by Applicable Law**, or as otherwise agreed to by the Parties, BellSouth shall not subdivide the frequency of the Loop.

[BellSouth Version] <<customer_short_name>> shall purchase the entire bandwidth of the Loop and, except as required herein or as otherwise agreed to by the Parties, BellSouth shall not subdivide the frequency of the Loop.

Item No. 33, Issue No. 2-15 [Section 2.2.3]: Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?

2.2.3 [CLEC Version] Fiber-to-the-Home Loops. BellSouth will provide access to unbundled Fiber-to-the-Home Loops as required by FCC Rule 51.319(a)(3). **Unbundling relief contemplated by that rule applies only to Fiber-to-the-Home Loop facilities deployed after October 2, 2003.**

[BellSouth Version] BellSouth will provide access to unbundled Fiber-to-the-Home Loops as required by FCC Rule 51.319(a)(3).

Item No. 35, Issue No. 2-17 [Sections 2.4.3, 2.4.4]: (A) What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report when no trouble is ultimately found to exist? (B) What rate should apply when BellSouth is required to dispatch to an end user location more than once due to incorrect or incomplete information?

2.4.3 [CLEC Version] If <<customer_short_name>> reports a trouble on a non-designed or designed Loop and no trouble actually exists, BellSouth will charge <<customer_short_name>> for any dispatching and testing (both inside and outside the CO) required by BellSouth in order to confirm the Loop's working status, **in accordance with TELRIC compliant rates to be approved by the Commission and incorporated in Exhibit A of this Attachment**. If <<customer_short_name>> reports the same trouble on the same UNE Loop within thirty (30) calendar days of BellSouth's notification to <<customer_short_name>> of its disposition of the prior trouble, and BellSouth is able to determine that such trouble does exist on BellSouth's network, <<customer_short_name>> shall be credited on the next billing cycle for charges associated with the prior trouble.

[BellSouth Version] If <<customer_short_name>> reports a trouble on a non-designed or designed Loop and no trouble actually exists, BellSouth will charge <<customer_short_name>> for any dispatching and testing (both inside and outside the CO) required by BellSouth in order to confirm the Loop's working status. **BellSouth will assess the applicable Trouble Determination Charge (TDC) rates from BellSouth's FCC No. 1 Section 13.3.1 for designed circuits, Section A4.3.1 of the GSSTs for Alabama, Kentucky, Louisiana, Mississippi and Tennessee where trouble determination for non-designed circuits is covered under premises work charges, Section A15.4.1 of the GSSTs for Florida and North Carolina where trouble determination for non-designed circuits is covered under trouble location charges, and Section N1.1.2 of the Non-Regulated Services Pricing tariff for Georgia and South Carolina where trouble determination for non-designed circuits is covered under trouble determination charges.** If <<customer_short_name>> reports the same trouble on the same UNE Loop within thirty (30) calendar days of BellSouth's notification to <<customer_short_name>> of its disposition of the prior trouble, and BellSouth is able to determine that such trouble does exist on BellSouth's network, <<customer_short_name>> shall be credited on the next billing cycle for charges associated with the prior trouble.

2.4.4 [CLEC Version] In the event BellSouth must dispatch to the End User's location more than once due to incorrect or incomplete information provided by <<customer_short_name>> (e.g., incomplete address, incorrect contact name/number, etc.), BellSouth will bill <<customer_short_name>> for each

additional dispatch required to repair the circuit due to the incorrect/incomplete information provided, **in accordance with TELRIC compliant rates to be approved by the Commission and incorporated in Exhibit A of this Attachment.**

[BellSouth Version] In the event BellSouth must dispatch to the End User's location more than once due to incorrect or incomplete information provided by <<customer_short_name>> (e.g., incomplete address, incorrect contact name/number, etc.), BellSouth will bill <<customer_short_name>> for each additional dispatch required to repair the circuit due to the incorrect/incomplete information provided. **BellSouth will assess the applicable Trouble Determination rates from BellSouth's FCC No. 1 Section 13.3.1 for designed circuits, Section A4.3.1 of the GSSTs for Alabama, Kentucky, Louisiana, Mississippi and Tennessee, where trouble determination for non-designed circuits is covered under premises work charges, Section A15.4.1 of the GSSTs for Florida and North Carolina, where trouble determination for non-designed circuits is covered under trouble location charges, and Section N1.1.2 of BellSouth's Non-Regulated Services Pricing tariff for Georgia and South Carolina, where trouble determination for non-designed circuits is covered under trouble determination charges.**

Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to Line Conditioning?

2.12.1 [CLEC Version] **BellSouth shall perform line conditioning in accordance with FCC 47 C.F.R. 51.319 (a)(1)(iii). Line Conditioning is as defined in FCC 47 C.F.R. 51.319 (a)(1)(iii)(A).** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

[BellSouth Version] **Line Conditioning is defined as routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers. This may include the removal of any device, from a copper Loop or copper sub-loop that may diminish the capability of the Loop or sub-loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to; load coils, low pass filters, and range extenders.** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?

2.12.2 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length. BellSouth will remove load coils on copper loops and sub loops that are greater than 18,000 feet in length upon <<customer_short_name>>'s request at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties.**

Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

2.12.3 [CLEC Version] For any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of **other** bridged tap will be performed at the rates set forth in Exhibit A of this Attachment.

[BellSouth Version] For any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of bridged tap **that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet** will be performed at the rates set forth in Exhibit A of this Attachment.

2.12.4 [CLEC Version] **No Section**.

[BellSouth Version] **<<customer_short_name>> may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. Rates for ULM are as set forth in Exhibit A of this Attachment.**

Item No. 41, Issue No. 2-23 [Sections 2.16.2.3.2, 2.16.2.3.3, 2.16.2.3.5]:

(C) Under what circumstances, if any, should BellSouth be required to install new network terminating wire (UNTW) for the use of the CLEC? (2.16.2.3.2)

2.16.2.3.2 [CLEC Version] **BellSouth** shall not be required to install new or additional UNTW beyond existing UNTW **unless it would do so upon request from one of its own end users or is otherwise required to do so in order to comply with FCC or Commission rules and orders.**

[BellSouth Version] **Except as otherwise required in this Attachment or as necessary for BellSouth to perform its obligations under Section 2.16.2.3.1,** BellSouth shall not be required to install new or additional UNTW beyond existing UNTW **to provision the services of <<customer_short_name>>**.

Item No. 43, Issue No. 2-25 [Section 2.18.1.4]: Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by a carrier other than BellSouth?

2.18.1.4 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth's provisioning of LMU information to the requesting CLEC for facilities is contingent upon either BellSouth or the requesting CLEC controlling the Loop(s) that serve the service location for which LMU information has been requested by the CLEC. The requesting CLEC is not authorized to receive LMU information on a facility used or controlled by another CLEC unless BellSouth receives a Letter of Authorization (LOA) from the voice CLEC (owner) or its authorized agent on the LMUSI submitted by the requesting CLEC.**

Item No. 45, Issue No. 2-27 [Section 3.10.3]: What should be CLEC's indemnification obligations under a line splitting arrangement?

3.10.3 [CLEC Version] If <<customer_short_name>> is **purchasing line splitting and it is not the data provider**, <<customer_short_name>> shall indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs including reasonable attorney fees **reasonably arising or resulting from the actions taken by the data provider in connection with the line splitting arrangement, except to the extent caused by BellSouth's gross negligence or willful misconduct.**

[BellSouth Version] If <<customer_short_name>> is **not the data provider**, <<customer_short_name>> shall indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs including reasonable attorney fees, **which arise out of actions related to the data provider.**

Item No. 46, Issue No. 2-28 [Section 3.10.4]: (A) May BellSouth refuse to provide DSL services to CLEC's customers absent a Commission/Authority order establishing a right for it to do so?

(B) Should CLEC be entitled to incorporate into the Agreement, for the term of this Agreement, rates, terms and conditions that are no less favorable in any respect, than the rates terms and conditions that BellSouth has with any third party that would enable CLEC to serve a customer via a UNE loop that may also be used by BellSouth for the provision of DSL services to the same customer?

3.10.4 [CLEC Version] **In cases where <<customer_short_name>> purchases UNEs from BellSouth, BellSouth shall not refuse to provide DSL transport or DSL services (of any kind) to <<customer_short_name>> and its End Users, unless BellSouth has been expressly permitted to do so by the Commission. Where BellSouth provides such transport or services to <<customer_short_name>> and its End Users, BellSouth shall do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity.**

3.2.1 [BellSouth Version] **To the extent required by Applicable Law, BellSouth shall provide its DSL service and Fast Access services to <<customer_short_name>>, for use with UNE-P as Loops provisioned pursuant to this Agreement, pursuant to separately negotiated rates, terms and conditions in a non-discriminatory manner.**

Item No. 50, Issue No. 2-32 [Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5and 5.2.5.2.7]: How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?

5.2.5.2.1 [CLEC Version] 1) Each circuit to be provided to each **customer** will be assigned a local number prior to the provision of service over that circuit;

[BellSouth Version] 1) Each circuit to be provided to each **End User** will be assigned a local number prior to the provision of service over that circuit;

5.2.5.2.3 [CLEC Version] 3) Each circuit to be provided to each **customer** will have 911 or E911 capability prior to provision of service over that circuit;

[BellSouth Version 3) Each circuit to be provided to each **End User** will have 911 or E911 capability prior to provision of service over that circuit;

5.2.5.2.4 [CLEC Version] 4) Each circuit to be provided to each **customer** will terminate in a collocation arrangement that meets the requirements of FCC 47 C.F.R. 51.318(c);

[BellSouth Version 4) Each circuit to be provided to each **End User** will terminate in a collocation arrangement that meets the requirements of FCC 47 C.F.R. 51.318(c);

5.2.5.2.5 [CLEC Version] 5) Each circuit to be provided to each **customer** will be served by an interconnection trunk in the same LATA as the customer premises served by the EEL over which <<customer_short_name>> will transmit the calling party's number in connection with calls exchanged over the trunk;

[BellSouth Version 5) Each circuit to be provided to each **End User** will be served by an interconnection trunk in the same LATA as the customer premises served by the EEL over which <<customer_short_name>> will transmit the calling party's number in connection with calls exchanged over the trunk;

5.2.5.2.7 [CLEC Version] 7) Each circuit to be provided to each **customer** will be served by a switch capable of switching local voice traffic.

[BellSouth Version] 7) Each circuit to be provided to each **End User** will be served by a switch capable of switching local voice traffic.

Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A) How often, and under what circumstances, should BellSouth be able to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria?

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

5.2.6 [CLEC Version] BellSouth may, on an annual basis, **and only based upon cause,** conduct an audit **of <<customer_short_name>>'s records** in order to verify compliance with the high capacity EEL eligibility criteria.

[BellSouth Version] BellSouth may, on an annual basis, conduct an audit in order to verify compliance with the high capacity EEL eligibility criteria.

5.2.6.1 [CLEC Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>, **identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit shall also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance.** Such Notice of Audit will be delivered to <<customer_short_name>> **with all supporting documentation** no less than thirty (30) calendar days prior to the date upon which **BellSouth seeks to commence an audit.**

[BellSouth Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>. Such Notice of Audit will be delivered to <<customer_short_name>> no less than thirty (30) calendar days prior to the date upon which **the audit will commence.**

5.2.6.2 [<<customer_short_name>> Version] The audit shall be conducted by a third party independent auditor **mutually agreed-upon by the Parties** and retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations) **no sooner than thirty (30) calendar days after the parties have reached agreement on the auditor.**

[BellSouth Version] The audit shall be conducted by a third party independent auditor retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations).

Item No. 52, Issue No. 2-34 [Section 5.2.6.2.3] – Under what circumstances should CLEC be required to reimburse BellSouth for the cost of the independent auditor?

5.2.6.2.3 [CLEC Version] To the extent the independent auditor's report concludes that <<customer_short_name>> failed to comply **in all material respects** with the service eligibility criteria, <<customer_short_name>> shall reimburse BellSouth for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that <<customer_short_name>> did comply in all material respects with the service eligibility criteria, BellSouth will reimburse <<customer_short_name>> for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The Parties shall provide such reimbursement within thirty (30) calendar days of receipt from <<customer_short_name>> of a statement of such costs.

[BellSouth Version] To the extent the independent auditor's report concludes that <<customer_short_name>> failed to comply with the service eligibility criteria, <<customer_short_name>> shall reimburse BellSouth for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that <<customer_short_name>> did comply in all material respects with the service eligibility criteria, BellSouth will reimburse <<customer_short_name>> for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The Parties shall provide such reimbursement within thirty (30) calendar days of receipt from <<customer_short_name>> of a statement of such costs.

Item No. 55, Issue No. 2-37 [Section 6.4.2]: What terms should govern CLEC access to test and splice Dark Fiber Transport?

6.4.2 [CLEC Version] <<customer_short_name>> may **splice and** test Dark Fiber Transport obtained from BellSouth, **at any technically feasible point**, using CLEC or CLEC designated personnel. BellSouth shall provide appropriate interfaces to allow **splicing and testing of** Dark Fiber.

[BellSouth Version] <<customer_short_name>> may test Dark Fiber Transport obtained from BellSouth using CLEC or CLEC designated personnel. BellSouth shall provide appropriate interfaces to allow <<**customer_short_name>> to test** Dark Fiber.

Item No. 56, Issue No. 2-38 [Sections 7.2, 7.3]: Should BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching?

7.2 [CLEC Version] Call Related Databases are the databases other than OSS, that are used in signaling networks for billing and collection, or the transmission, routing or other provision of a telecommunications service. BellSouth shall only provide unbundled access to BellSouth Switched Access (SWA) 8XX Toll Free Dialing Ten Digit Screening Service, Line Information Database (LIDB), Signaling, Signaling Link Transport, Signaling Transfer Points, SS7 AIN Access, Service Control Point\Databases, Local Number Portability Databases, SS7 Network Interconnection, and Calling Name (CNAM) Database Service at the prices set forth herein where BellSouth is required to provide and is providing unbundled access to local circuit switching to <<customer_short_name>>. **SS7 Network Interconnection and Signaling Link Transport shall be provided at the TELRIC-compliant, Commission approved rates set forth in Exhibit A of Attachment 3, regardless of whether BellSouth is required to provide and is providing unbundled access to local circuit switching to <<customer_short_name>>.**

[BellSouth Version] Call Related Databases are the databases **set forth in this Attachment**, other than OSS, that are used in signaling networks for billing and collection, or the transmission, routing or other provision of a telecommunications service. **Notwithstanding anything to the contrary herein**, BellSouth shall only provide unbundled access to BellSouth Switched Access (SWA) 8XX Toll Free Dialing Ten Digit Screening Service, Line Information Database (LIDB), Signaling, Signaling Link Transport, Signaling Transfer Points, SS7 AIN Access, Service Control Point\Databases, Local Number Portability Databases, SS7 Network Interconnection, and Calling Name (CNAM) Database Service at the prices set forth herein where BellSouth is required to provide and is providing unbundled access to local circuit switching to <<customer_short_name>>.

7.3 [CLEC Version] To the extent unbundled local circuit switching is converted to market based switching pursuant to Section 4.2.2 above, BellSouth may, at its discretion, provide access to BellSouth Switched Access (SWA) 8XX Toll Free Dialing Ten Digit Screening Service, LIDB, Signaling, Signaling Transfer Points, SS7 AIN Access, Service Control Point\Databases, Local Number Portability Databases, Calling Name (CNAM) at market based rates pursuant to a separate agreement or tariff.

[BellSouth Version] To the extent unbundled local circuit switching is converted to market based switching pursuant to Section 4.2.2 above, BellSouth may, at its discretion, provide access to BellSouth Switched Access (SWA) 8XX Toll Free

Dialing Ten Digit Screening Service, LIDB, Signaling, **Signaling Link Transport**, Signaling Transfer Points, SS7 AIN Access, Service Control Point\Databases, Local Number Portability Databases, **SS7 Network Interconnection**, Calling Name (CNAM) at market based rates pursuant to a separate agreement or tariff.

Item No. 57, Issue No. 2-39 [Sections 7.4]: A) Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider? (B) If so, which party should bear the cost?

7.4 [CLEC Version] **The Parties agree that they will perform CNAM queries and pass such information on all calls exchanged between the Parties, regardless of whether** that would require BellSouth to query a third party database provider.

[BellSouth Version] **Nothing in this Agreement will be construed to require BellSouth to query a third party database. Should BellSouth query a third party database then it will be performed subject to a separate agreement. If BellSouth terminates an agreement with a third party database provider, then BellSouth will provide notice pursuant to a carrier notification letter to the CLECs.**

Item No. 58, Issue No. 2-40 [Sections 9.3.5]: Should LIDB charges be subject to application of jurisdictional factors?

9.3.5 [CLEC Version] **No Section.**

[BellSouth Version] **The application of the LIDB rates contained in Exhibit A of this Attachment will be based on a Percent CLEC LIDB Usage (PCLU) factor. <<customer_short_name>> shall provide BellSouth a PCLU. The PCLU will be applied to determine the percentage of total LIDB usage to be billed to the other Party at local rates. <<customer_short_name>> shall update its PCLU on the first of January, April, July and October and shall send it to BellSouth to be received no later than thirty (30) calendar days after the first of each such month based on local usage for the past three months ending the last day of December, March, June and September, respectively. Requirements associated with PCLU calculation and reporting shall be as set forth in BellSouth's Jurisdictional Factors Reporting Guide, as it is amended from time to time.**

ATTACHMENT 3

INTERCONNECTION

Item No. 61, Issue No. 3-2 [Section 9.6 (KMC), 9.6 (NSC), 9.6 (NVX, XSP)]: (A) What is the definition of a global outage? (B) Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report? (C)(1) What target interval should apply for the delivery of such reports? (C)(2) What target interval should apply for reports related to global outages?

9.6 [CLEC Version] Once <<customer_short_name>> determines that there is an outage that encompasses either a particular section of the network or the whole network, then <<customer_short_name>> shall generate a trouble ticket to the CISC. After issuing the trouble ticket, <<customer_short_name>> will notify the appropriate BellSouth representative in the CISC via telephone. <<customer_short_name>> may then send an email confirmation to such BellSouth representative. BellSouth will work cooperatively with <<customer_short_name>> to determine the appropriate steps to resolve such outage. Additionally, <<customer_short_name>> will provide BellSouth with any applicable information that is necessary to resolve such outage and the Parties will work cooperatively to take all steps necessary to resolve the outage. **Upon request, BellSouth will provide a written root cause analysis report for all global outages, and for any trunk group outage that has occurred 3 or more times in a 60 day period. BellSouth shall use best efforts to provide such report within five (5) business days after the request for it is made.**

[BellSouth Version] Once <<customer_short_name>> determines that there is an outage that encompasses either a particular section of the network or the whole network, then <<customer_short_name>> shall generate a trouble ticket to the CISC. After issuing the trouble ticket, <<customer_short_name>> will notify the appropriate BellSouth representative in the CISC via telephone. <<customer_short_name>> may then send an email confirmation to such BellSouth representative. BellSouth will work cooperatively with <<customer_short_name>> to determine the appropriate steps to resolve such outage. Additionally, <<customer_short_name>> will provide BellSouth with any applicable information that is necessary to resolve such outage and the Parties will work cooperatively to take all steps necessary to resolve the outage. **<<customer_short_name>> may submit a reasonable request to BellSouth for a written analysis of the cause of any global outage affecting <<customer_short_name>>'s network. BellSouth shall use best efforts to provide such report within thirty (30) days of such request.**

Item No. 62, Issue No. 3-3 [Section 10.9.5 (KMC), 10.7.4 (NSC), 10.7.4 (NVX), 10.12.4 (XSP)]: What provisions should apply regarding failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?

10.7.4 [CLEC Version] In the event that the Initial Billing Party, as defined herein, was provided the accurate switched access detailed usage data in a manner that allowed the Initial Billing Party to generate and provide such data to the Subsequent Billing Party within 90 days after the recording date and where the Initial Billing Party failed to provide notice to the Subsequent Billing Party of **an** inability to provide such data **due to a failure of a third party to provide such information to the Initial Billing Party** and the Subsequent Billing Party is unable to bill and/or collect access revenues due to the Initial Billing Party's failure to provide such data within said time period, then the Initial Billing Party shall be liable to the other Party in an amount equal to the unbillable or uncollectible revenues. Each company will provide complete documentation to the other to substantiate any claim of such unbillable or uncollectible revenues. In the event that the Parties disagree as to the liability of the Initial Billing Party for such unbillable or uncollectible revenues, then either Party may invoke the Dispute Resolution process set forth in this Agreement.

[BellSouth Version] In the event that the Initial Billing Party, as defined herein, was provided the accurate switched access detailed usage data in a manner that allowed the Initial Billing Party to generate and provide such data to the Subsequent Billing Party within 90 days after the recording date and where the Initial Billing Party failed to provide notice to the Subsequent Billing Party of **any** inability to provide such data and the Subsequent Billing Party is unable to bill and/or collect access revenues due to the Initial Billing Party's failure to provide such data within said time period, then the Initial Billing Party shall be liable to the other Party in an amount equal to the unbillable or uncollectible revenues. Each company will provide complete documentation to the other to substantiate any claim of such unbillable or uncollectible revenues. In the event that the Parties disagree as to the liability of the Initial Billing Party for such unbillable or uncollectible revenues, then either Party may invoke the Dispute Resolution process set forth in this Agreement.

Item No. 63, Issue No. 3-4 [Section 10.10.6 (KMC), 10.8.6 (NSC), 10.8.6 (NVX), 10.13.5 (XSP)]: Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?

10.8.6 [CLEC Version] BellSouth agrees to deliver Transit Traffic originated by <<customer_short_name>> to the terminating carrier; provided, however, that <<customer_short_name>> is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of Transit Traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to <<customer_short_name>> for transiting <<customer_short_name>>-originated or terminated Transit Traffic. **Notwithstanding any other provision of this Attachment**, in the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by <<customer_short_name>>, <<customer_short_name>> shall reimburse BellSouth for all charges paid by BellSouth, **which BellSouth is contractually obligated to pay**, provided that BellSouth notifies and, upon request, provides <<customer_short_name>> with a copy of such an invoice, if available, or other equivalent supporting documentation (if an invoice is not available), and proof of payment and other applicable supporting documentation. BellSouth will provide such notice and information in a timely, reasonable and nondiscriminatory manner. BellSouth shall diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) **when no similar reimbursement provision applies.** Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

[BellSouth Version] BellSouth agrees to deliver Transit Traffic originated by <<customer_short_name>> to the terminating carrier; provided, however, that <<customer_short_name>> is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of Transit Traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to <<customer_short_name>> for transiting <<customer_short_name>>-originated or terminated Transit Traffic. In the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by <<customer_short_name>>, <<customer_short_name>> shall reimburse BellSouth for all charges paid by BellSouth, provided that BellSouth notifies <<customer_short_name>> and, upon request, provides <<customer_short_name>> with a copy of such an invoice, if available, or other equivalent supporting documentation (if an invoice is not available), and proof of payment and other applicable supporting documentation. BellSouth will **use commercially reasonable efforts to** provide such notice and information in a

timely, reasonable and nondiscriminatory manner. BellSouth shall diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) **under the same circumstances. Once <<customer_short_name>> reimburses BellSouth for any such payments, any disputes with respect to such charges shall be between <<customer_short_name>> and the terminating third party carrier.** Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

Item No. 64, Issue No. 3-5 [Section10.7.4.2 (KMC), 10.5.5.2 (NSC), 10.5.6.2 (NVX), 10.10.6 (XSP)]: While a dispute over jurisdictional factors is pending, what factors should apply in the interim?

10.7.4.2 [KMC, NSC, NVX Version] Upon either Party's request, the Parties will work in good faith to resolve the discrepancy between the factors submitted by the originating party and those proposed by the terminating party pursuant to Section 7.2.5 above. In the event that the Parties are unable to mutually agree as to the appropriate resolution, the Parties may negotiate a mutually agreeable resolution based on the data specific to the traffic patterns of the originating party or either Party may request an audit of the factors in accordance with Section 7.2.9 below. In the event that negotiations and audits fail to resolve disputes between the parties, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. **While such a dispute is pending, factors reported by the originating Party shall remain in place, unless the Parties mutually agree otherwise.**

[BellSouth Version] Upon either Party's request, the Parties will work in good faith to resolve the discrepancy between the factors submitted by the originating party and those proposed by the terminating party pursuant to Section 7.2.5 above. In the event that the Parties are unable to mutually agree as to the appropriate resolution, the Parties may negotiate a mutually agreeable resolution based on the data specific to the traffic patterns of the originating party or either Party may request an audit of the factors in accordance with Section 7.2.9 below. In the event that negotiations and audits fail to resolve disputes between the parties, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. **While such a dispute is pending, the factors proposed by the terminating Party pursuant to Section 7.2.5 above shall be utilized, unless the Parties mutually agree otherwise.**

10.10.6 [XSP Version] Upon either Party's request, the Parties will work in good faith to resolve the discrepancy between the factors submitted by the originating party and **the factors or actual measurements utilized** by the terminating party pursuant to Section 9.8.4 above. In the event that the Parties are unable to mutually agree as to the appropriate resolution, the Parties may negotiate a mutually agreeable resolution based on the data specific to the traffic patterns of the originating party or either Party may request an audit of the factors or **actual measurements** in accordance with Section 9.8.7 below. In the event that negotiations and audits fail to resolve disputes between the parties, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. **While such a dispute is pending, factors reported by the originating Party or, if the Parties' practice has been to use the actual measurements recorded by the terminating Party, such factors or actual measurements shall remain in place, unless the Parties mutually agree otherwise.**

[BellSouth Version] Upon either Party's request, the Parties will work in good faith to resolve the discrepancy between the factors submitted by the originating party and those proposed by the terminating party pursuant to Section 7.2.5 above. In the event that the Parties are unable to mutually agree as to the appropriate resolution, the Parties may negotiate a mutually agreeable resolution based on the data specific to the traffic patterns of the originating party or either Party may request an audit of the factors in accordance with Section 7.2.9 below. In the event that negotiations and audits fail to resolve disputes between the parties, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. **While such a dispute is pending, the factors proposed by the terminating Party pursuant to Section 7.2.5 above shall be utilized, unless the Parties mutually agree otherwise.**

Item No. 65, Issue No. 3-6 [Section 10.10. 1 (KMC), 10.8.1 (NSC), 10.13 (XSP)]: Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

10.10.1 [CLEC Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charge; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

[BellSouth's Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charges and **tandem intermediary charge**; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

Item No. 67, Issue No. 3-8 [Section, 10.2 (XSP)]: Should compensation for the transport and termination of ISP-bound Traffic be subject to a cap?

10.2 [XSP Version] **As long as the FCC's ISP Remand Order remains in effect, the following shall apply. In cases where Xspedius purchases, merges with or is purchased by an entire entity, or purchases all the active assets of an entity in one state, the ceiling of compensable ISP-bound minutes for that state shall be amended to add the ceiling of compensable ISP-bound minutes of that entity for each relevant state to the ceiling of compensable ISP-bound minutes for Xspedius for that state. In all other cases, the parties shall negotiate an appropriate ceiling of compensable ISP-bound minutes, if any.**

[BellSouth Version] **ISP-bound Traffic switching operations or accounts of a third party telecommunications carrier into Xspedius's business. BellSouth shall not be responsible for paying any more, and BellSouth reserves its right to argue that it should pay less, than the reciprocal compensation BellSouth may have otherwise been billed for with respect to such telecommunications carrier prior to the transaction by Xspedius.**

Item No. 73, Issue No. 3-14 [Sections 10.10.4, 10.10.5, 10.10.6,10.10.7 (XSP)]: Under what conditions should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?

10.10.4 [CLEC Version] **In Lieu of Jurisdictional Factors Reported**. Notwithstanding the provisions in Section 9.8.1, 9.8.2, and 9.8.3 above, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information shall, at the terminating Party's option, **either (1) be used to bill based upon actual measurements and jurisdictionalization, in lieu of factors reported by the originating party, or (2)** be utilized to determine the appropriate jurisdictional reporting factors, in lieu of those provided by the originating Party. In the event that the terminating Party opts to utilize its own data to determine jurisdictional reporting factors, such terminating Party shall notify the originating Party at least 30 days prior to the beginning of the calendar quarter in which the terminating Party will begin to utilize its own data.

[BellSouth Version] **In Lieu of Jurisdictional Factors Reported**. Notwithstanding the provisions in Section 9.8.1, 9.8.2, and 9.8.3 above, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information shall, at the terminating Party's option, be utilized to determine the appropriate jurisdictional reporting factors, in lieu of those provided by the originating Party. In the event that the terminating Party opts to utilize its own data to determine jurisdictional reporting factors, such terminating Party shall notify the originating Party at least 30 days prior to the beginning of the calendar quarter in which the terminating Party will begin to utilize its own data.

10.10.5 [CLEC Version] Upon the request of the originating Party, the terminating Party shall provide supporting data for the jurisdictional factors **or actual measurements** utilized by the terminating Party in lieu of those reported by the originating Party.

[BellSouth Version] Upon the request of the originating Party, the terminating Party shall provide supporting data for the jurisdictional factors utilized by the terminating Party in lieu of those reported by the originating Party.

10.10.6 [CLEC Version] Upon either Party's request, the Parties will work in good faith to resolve the discrepancy between the factors submitted by the originating party and factors **or actual measurements** utilized by the terminating party pursuant to Section 9.8.4 above. In the event that the Parties are unable to mutually agree as to the appropriate resolution, the Parties may negotiate a mutually agreeable resolution based on the data specific to the traffic patterns of the originating party

or either Party may request an audit of the factors or actual measurements in accordance with Section 9.8.7 below.

[BellSouth Version] Upon either Party's request, the Parties will work in good faith to resolve the discrepancy between the factors submitted by the originating party and factors utilized by the terminating party pursuant to Section 9.8.4 above. In the event that the Parties are unable to mutually agree as to the appropriate resolution, the Parties may negotiate a mutually agreeable resolution based on the data specific to the traffic patterns of the originating party or either Party may request an audit of the factors in accordance with Section 9.8.7 below.

10.10.7 [CLEC Version] Audits. On thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit of the jurisdictional reporting factors as reported or factors **or actual measurements** utilized pursuant to this Attachment 3 to ensure the proper billing of traffic. BellSouth and <<customer_short_name>> shall retain records of call detail for a minimum of six months from which the jurisdictional reporting factors can be ascertained. The audit shall be conducted during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. The Parties shall use commercially reasonable efforts to complete audits in as timely a manner as possible. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. The jurisdictional reporting factors or actual measurements shall be adjusted based upon the audit results and shall apply for the quarter the audit was completed, for the quarter prior to the completion of the audit, and, if factors are used, for the two quarters following the completion of the audit. If, as a result of an audit, either Party is found to have overstated the jurisdictional reporting factors or actual measurements by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

[BellSouth Version] Audits. On thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit of the jurisdictional reporting factors as reported or factors utilized pursuant to this Attachment 3 to ensure the proper billing of traffic. BellSouth and <<customer_short_name>> shall retain records of call detail for a minimum of six months from which the jurisdictional reporting factors can be ascertained. The audit shall be conducted during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. The Parties shall use commercially reasonable efforts to complete audits in as timely a manner as possible. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. The jurisdictional reporting factors or actual measurements shall be adjusted based upon the audit results and shall apply for the quarter the audit was completed, for the quarter prior to the completion of the audit, and, if factors are used, for the two quarters following the completion of the audit. If, as a result of an audit, either Party is found to have overstated the

jurisdictional reporting factors or actual measurements by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

ATTACHMENT 4

COLLOCATION

Item No. 74, Issue No. 4-1 [Section 3.9]: (A) What definition of "Cross Connect" should be included in the Agreement?

3.9 [CLEC Version] **Cross Connect. A cross-connection (cross-connect) is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end, as defined and described by the FCC in its applicable rules and orders. A cross connect may consist of** a jumper on a frame (Main Distribution or Intermediate Distribution) or panel (DSX or LGX) that is used to connect equipment and/or facility terminations together. For collocation arrangements, the definition of cross connect will also include the tie cable connecting the frame/panel with the collocation demarc if the demarc is located at a point other than the frame/panel (POT Bay). A cross connect involved in connecting equipment/facility terminations with equipment/facility terminations associated with a collocation arrangement, either physical or virtual, is ordered separately and is charged at the rates found in Attachment 2 or Attachment 4**. A cross connect involved in the provision of services not associated with a collocation arrangement is not ordered but is a part of the provisioning of the service.**

[BellSouth Version] Cross Connect. A cross connect is a jumper on a frame (Main Distribution or Intermediate Distribution) or panel (DSX or LGX) that is used to connect equipment and/or facility terminations together. For collocation arrangements, the definition of cross connect will also include the tie cable connecting the frame/panel with the collocation demarc if the demarc is located at a point other than the frame/panel (POT Bay). A cross connect involved in connecting equipment/facility terminations with equipment/facility terminations associated with a collocation arrangement, either physical or virtual, is ordered separately and is charged at the rates found in Attachment 2 or Attachment 4.

Item No. 75, Issue No. 4-2 [Sections 5.21.1, 5.21.2]: In circumstances not covered by the scope of the FCC Rule 51.233 (which relates to Advanced Services equipment) what restrictions should apply to the CLEC's use of collocation space or collocated equipment/facilities when such use impacts others?

5.21.1 [CLEC Version] Interference or Impairment. Notwithstanding any other provisions of this Attachment, <<customer_short_name>> shall not use any product or service provided under this Agreement, any other service related thereto or used in combination therewith, or place or use any equipment or facilities in any manner that 1) significantly degrades **or significantly** impairs from the service provider's perspective **a telecommunications** service provided by BellSouth, or by any other entity whose service enters, is routed through or exits that Central Office; 2) endangers or damages the equipment, facilities or any other property of BellSouth or of any other entity located in the central office or on the Premises in which the Central Office is located; 3) knowingly or unlawfully compromises the privacy of any communications routed through the Premises or 4) creates an unreasonable risk of injury or death to any individual or to the public. If BellSouth reasonably determines that any equipment or facilities of <<customer_short_name>> violates the provisions of this paragraph, BellSouth shall provide written notice to <<customer_short_name>>, which shall direct <<customer_short_name>> to cure the violation within forty-eight (48) hours of <<customer_short_name>>'s actual receipt of written notice or, if such cure is not feasible, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. After receipt of the notice, the Parties agree to consult immediately and, if necessary, to conduct an inspection of the arrangement. The Parties will act in good faith and in a cooperative manner to determine or isolate the source of significant degradation. Any dispute regarding the source of the risk, impairment, interference, or degradation may be resolved pursuant to the dispute resolution provisions set forth in the General Terms and Conditions of this Agreement.

[BellSouth's Version] Interference or Impairment. Notwithstanding any other provisions of this Attachment, <<customer_short_name>> shall not use any product or service provided under this Agreement, any other service related thereto or used in combination therewith, or place or use any equipment or facilities in any manner that 1) significantly degrades or impairs from the service provider's perspective **a qualifying or nonqualifying** service provided by BellSouth, or by any other entity whose service enters, is routed through or exits that Central Office; 2) endangers or damages the equipment, facilities or any other property of BellSouth or of any other entity located in the central office or on the Premises in which the Central Office is located; 3) knowingly or unlawfully compromises the privacy of any communications routed through the Premises or 4) creates an unreasonable risk of injury or death to any individual or to the

public. If BellSouth reasonably determines that any equipment or facilities of <<customer_short_name>> violates the provisions of this paragraph, BellSouth shall provide written notice to <<customer_short_name>>, which shall direct <<customer_short_name>> to cure the violation within forty-eight (48) hours of <<customer_short_name>>'s actual receipt of written notice or, if such cure is not feasible, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. After receipt of the notice, the Parties agree to consult immediately and, if necessary, to conduct an inspection of the arrangement. The Parties will act in good faith and in a cooperative manner to determine or isolate the source of significant degradation. Any dispute regarding the source of the risk, impairment, interference, or degradation may be resolved pursuant to the dispute resolution provisions set forth in the General Terms and Conditions of this Agreement.

5.21.2 [CLEC Version] Except in the case of the deployment of an advanced service which significantly degrades the performance of other advanced services or traditional voice band services, if <<customer_short_name>> fails to commence curative action within twenty-four (24) hours and exercise **commercially reasonable efforts** to complete such action as soon as **practicable** or if the violation is of a character that poses an immediate and substantial threat of physical damage to property or injury or death to any person, then and only in that event, BellSouth may take such action as it deems necessary to eliminate such threat, including, without limitation, the interruption of electrical power to <<customer_short_name>>'s equipment which BellSouth has determined beyond a reasonable doubt is the cause of such threat**.** In the case of <<customer_short_name>> not taking action within twenty-four (24) hours and exercising **commercially reasonable efforts** to complete such action as soon as **practicable,** BellSouth will provide notice to <<customer_short_name>> prior to, or, if made impossible due to the nature of the threat imposed, as soon as possible after the taking of such action and provided that BellSouth, its agents, contractors or employees conduct themselves in strict compliance with this Section and except to the extent that such action by BellSouth fails to comport with the requirements of this paragraph or otherwise constitutes negligence, gross negligence or willful misconduct, BellSouth shall have no liability to <<customer_short_name>> for any damages arising from such action. If BellSouth's right to take action pursuant to this Section results solely from <<customer_short_name>>'s failure to take curative action or to exercise commercially reasonable efforts to complete such action as soon as possible, BellSouth shall provide notice prior to taking action under this Section. If <<customer_short_name>> disagrees with respect to BellSouth's right to take such action, <<customer_short_name>> **may provide notice of dispute to BellSouth within 24 hours and BellSouth may then** pursue dispute resolution pursuant to the General Terms and Conditions hereof.

[BellSouth Version] Except in the case of the deployment of an advanced service which significantly degrades the performance of other advanced services or

traditional voice band services, **if <<customer_short_name>> fails to commence curative action within twenty-four (24) hours and exercise reasonable diligence to complete such action as soon as possible or** if the violation is of a character that poses an immediate and substantial threat of physical damage to property or injury or death to any person, then and only in that event, BellSouth may take such action as it deems necessary to eliminate such threat, including, without limitation, the interruption of electrical power to <<customer_short_name>>'s equipment which BellSouth has determined beyond a reasonable doubt is the cause of such threat. **In the case of <<customer_short_name>> not taking action within twenty-four (24) hours and exercising reasonable diligence to complete such action as soon as possible,** BellSouth will provide notice to <<customer_short_name>> prior to, or, if made impossible due to the nature of the threat imposed, as soon as possible after the taking of such action and provided that BellSouth, its agents, contractors or employees conduct themselves in strict compliance with this Section and except to the extent that such action by BellSouth fails to comport with the requirements of this paragraph or otherwise constitutes negligence, gross negligence or willful misconduct, BellSouth shall have no liability to <<customer_short_name>> for any damages arising from such action. If BellSouth's right to take action pursuant to this Section results solely from <<customer_short_name>>'s failure to take curative or to complete such action as soon as possible, BellSouth shall provide notice prior to taking action under this Section. If <<customer_short_name>> disagrees with respect to BellSouth's right to take such action, <<customer_short_name>> may pursue dispute resolution pursuant to the General Terms and Conditions hereof.

Item No. 76, Issue No. 4-3 [Section 8.1]: To the extent the CLECs paid for space preparation and power on a non-recurring basis, how should those payments be accounted for in light of the current collocation rate structure?

8.1 [CLEC Version] Commission Approved Rates and Charges. <<customer_short_name>> agrees to pay the rates and charges identified in Exhibit B attached hereto. Where rates have been "grandfathered", those rates shall be the rates that were in effect prior to the Effective Date of this Agreement, **unless application of such rates would be inconsistent with the underlying purpose for grandfathering,** or otherwise specified herein, and such rates shall be incorporated in Exhibit B attached hereto.

[BellSouth Version] Commission Approved Rates and Charges. <<customer_short_name>> agrees to pay the rates and charges identified in Exhibit B attached hereto. Where rates have been "grandfathered", those rates shall be the rates that were in effect prior to the Effective Date of this Agreement, or otherwise specified herein, and such rates shall be incorporated in Exhibit B attached hereto. **<<customer_short_name>> shall be charged the grandfathered rate instead of the current rate in those instances where <<customer_short_name>> has demonstrated to BellSouth that the grandfathered rate is the applicable rate for that specific collocation arrangement, or part thereof, in accordance with Sections 8.6 and 8.11**.

Item No. 77, Issue No. 4-4 [Section 8.4]: When should BellSouth commence billing of recurring charges for power?

8.4 [CLEC Version] If <<customer_short_name>> has met the applicable fifteen (15th) calendar day walkthrough interval specified in Section 4.3 above, billing for recurring charges **other than those for power** will begin on the Space Acceptance Date as defined above in Section 4.3 above. In the event that <<customer_short_name>> fails to complete an acceptance walkthrough within the applicable fifteen (15th) calendar day interval, billing for recurring charges **other than those for power** will commence on the Space Ready Date. If <<customer_short_name>> occupies the space prior to the Space Ready Date, the date <<customer_short_name>> occupies the space is deemed the new Space Acceptance Date and billing for recurring charges **other than those for power** will begin on that date. **Billing for recurring charges for power (if drawn from BellSouth), will commence on the date upon which the primary and redundant connections from <<customer_short_name>>'s equipment in the Collocation Space to the BellSouth power board or BDFB are installed. <<customer_short_name>> must notify BellSouth in writing when the collocation equipment to power source installation is complete.**

[BellSouth Version] **Recurring Charges**. If <<customer_short_name>> has met the applicable fifteen (15th) calendar day walkthrough interval specified in Section 4.3 above, billing for **recurring charges** will begin upon the Space Acceptance Date. In the event that <<customer_short_name>> fails to complete an acceptance walkthrough within the applicable fifteen (15th) calendar day interval, billing for **recurring charges** will commence on the Space Ready Date. If <<customer_short_name>> occupies the space prior to the Space Ready Date, the date <<customer_short_name>> occupies the space is deemed the new Space Acceptance Date and billing for **recurring charges** will begin on that date.

Item No. 79, Issue No. 4-6 [Sections 8.11, 8.11.1, 8.11.2]: What rates should apply for BellSouth-supplied DC power?

8.11 [CLEC Version] Power Rates. Rates for power are as set forth in Exhibit B of this Attachment. Applicable rates shall vary depending on whether <<customer_short_name>> elects to be billed on a "fused amp" basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method, or on a "used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the power usage metering option set forth in Section 9 below. Under either billing method, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under a ICB pricing or non-recurring charge arrangement and there will rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges.

[BellSouth Version] Power Rates. Rates for power are as set forth in Exhibit B of this Attachment. **Recurring charges for -48V DC power will be assessed per amp per month based upon the BellSouth Certified Supplier engineered and installed power feed fused ampere capacity. In Tennessee,** applicable rates shall vary depending on whether <<customer_short_name>> elects to be billed on a "fused amp" basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method or on a "used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the power usage metering option set forth in Section 9 below. Under either billing method, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under a ICB pricing or non-recurring charge arrangement and there will rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges.

8.11.1 [CLEC Version] Under the fused amp billing option, <<customer_short_name>> shall be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if the Parties either previously agreed to "grandfather" such arrangements or such arrangements are grandfathered as a result of <<customer_short_name>> having provided documentation to BellSouth demonstrating that <<customer_short_name>> paid installation costs under an ICB or nonrecurring rate schedule for the collocation arrangement power installation, <<customer_short_name>> will only be billed the recurring rate for the DC power in effect prior to the Effective Date of this Agreement, or, if such grandfathered rates had not been incorporated into the Parties' most recent Agreement, the **most recent Commission approved rate that does not include an infrastructure component shall apply.**

[BellSouth Version] **In Tennessee**, under the fused amp billing option, <<customer_short_name>> shall be billed at the Commission's most recently

approved fused amp recurring rate for DC power. However, if the Parties either previously agreed to "grandfather" such arrangements or such arrangements are grandfathered as a result of <<customer_short_name>> having provided documentation to BellSouth demonstrating that <<customer_short_name>> paid installation costs under an ICB or nonrecurring rate schedule for the collocation arrangement power installation, <<customer_short_name>> will only be billed the recurring rate for the DC power in effect prior to the Effective Date of this Agreement, or, if such grandfathered rates had not been incorporated into the Parties' most recent Agreement, the **rates contained in Exhibit B of this Attachment.**

8.11.2 [CLEC Version] Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if the Parties either previously agreed to "grandfather" such arrangements or such arrangements are grandfathered as a result of <<customer_short_name>> having provided documentation to BellSouth demonstrating that <<customer_short_name>> paid installation costs under an ICB or nonrecurring rate schedule for the collocation arrangement power installation, <<customer_short_name>> will only be billed a recurring rate for the AC usage based on the most recent Commission approved rate and the DC power infrastructure component exclusive of the costs previously paid through the ICB or NRC pricing **(as set by the Commission).**

[BellSouth Version] **In Tennessee**, Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if the Parties either previously agreed to "grandfather" such arrangements or such arrangements are grandfathered as a result of <<customer_short_name>> having provided documentation to BellSouth demonstrating that <<customer_short_name>> paid installation costs under an ICB or nonrecurring rate schedule for the collocation arrangement power installation, <<customer_short_name>> will only be billed a recurring rate for the AC usage based on the most recent Commission approved rate and the DC power infrastructure component exclusive of the costs previously paid through the ICB or NRC pricing.

Item No. 80, Issue No. 4-7 [Section 9.1.1]: (A) Under the fused amp billing option, how should recurring and non-recurring charges be applied?(B) What should the charges be?

9.1.1 [CLEC Version] Fused Amp Billing **Option**. Monthly recurring charges for -48V DC power will be assessed per fused amp per month in a manner consistent with Commission orders and as set forth in Section 8 of this Attachment. Nonrecurring charges for –48V DC power distribution, will be **as set by the Commission**.

[BellSouth Version] Fused Amp Billing. Monthly recurring charges for -48V DC power will be assessed per fused amp per month **based upon the engineered and installed power feed fused ampere capacity** in a manner consistent with Commission orders and as set forth in Section 8 of this Attachment. Nonrecurring charges for –48V DC power distribution **will be based on the costs associated with collocation power plant investment and the associated infrastructure.**

Item No. 81, Issue No. 4-8 [Sections 9.1.2, 9.1.3]: (A) Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option? (B) If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?

9.1.2 [CLEC Version] Power Usage Metering Option. Monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of this Attachment. Nonrecurring charges for –48V DC power distribution will be **as set by the Commission.**

[BellSouth Version] **Tennessee** Power Usage Metering Option. **In Tennessee**, monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of this Attachment. Nonrecurring charges for –48V DC power distribution will be **based on the costs associated with collocation power plant investment and the associated infrastructure.**

9.1.3 [CLEC Version] When <<customer_short_name>> selects the power usage metering option for power billing, the following terms shall apply.

[BellSouth Version] **In Tennessee**, <<customer_short_name>> may select the power usage metering option for power billing, in which case the following terms shall apply.

Item No. 82, Issue No. 4-9 [Sections 9.3]: For BellSouth-supplied AC power, should CLEC be entitled to choose between a fused amp billing option and a power usage metering option?

9.3 [CLEC Version] If <<customer_short_name>> elects to install its own DC Power Plant, BellSouth shall provide Alternating Current (AC) power to feed <<customer_short_name>>'s DC Power Plant. Charges for AC power will be assessed **in the same manner as charges for DC power are assessed, as set forth in Section 9.1 (including subsections above).** When obtaining power from a BellSouth service panel, protection devices and power cables must be engineered (sized) and installed by <<customer_short_name>>'s BellSouth Certified Supplier, with the exception that BellSouth shall engineer and install protection devices and power cables for Adjacent Collocation. <<customer_short_name>>'s BellSouth Certified Supplier must also provide a copy of the engineering power specifications prior to the day on which <<customer_short_name>>'s equipment becomes operational. Charges for AC power shall be assessed pursuant to the rates specified in Exhibit B. AC power voltage and phase ratings shall be determined on a per location basis. At <<customer_short_name>>'s option, <<customer_short_name>> may arrange for AC power in an Adjacent Collocation arrangement from a retail provider of electrical power.

[BellSouth Version] If <<customer_short_name>> elects to install its own DC Power Plant, BellSouth shall provide Alternating Current (AC) power to feed <<customer_short_name>>'s DC Power Plant. Charges for AC power will be assessed per **breaker** ampere. When obtaining power from a BellSouth service panel, protection devices and power cables must be engineered (sized) and installed by <<customer_short_name>>'s BellSouth Certified Supplier, with the exception that BellSouth shall engineer and install protection devices and power cables for Adjacent Collocation. <<customer_short_name>>'s BellSouth Certified Supplier must also provide a copy of the engineering power specifications prior to the day on which <<customer_short_name>>'s equipment becomes operational. Charges for AC power shall be assessed pursuant to the rates specified in Exhibit B. AC power voltage and phase ratings shall be determined on a per location basis. At <<customer_short_name>>'s option, <<customer_short_name>> may arrange for AC power in an Adjacent Collocation arrangement from a retail provider of electrical power.

ATTACHMENT 6

ORDERING

Item No. 84, Issue No. 6-1 [Section 2.5.1]: Should payment history be included in the CSR?

2.5.1 [CLEC Version] **CSR information shall include customer payment history to the extent authorized or required by the FCC, Commission or End User.**

[BellSouth Version] **No Section**.

Item No. 85, Issue No. 6-2 [Section 2.5.5]: Should CLEC have to provide BellSouth with access to CSRs within firm intervals?

2.5.5 [CLEC Version] Subject to the same exclusions that apply to BellSouth's delivery of CSRs, <<customer_short_name>> **shall use best efforts to** provide to BellSouth access to CSRs within **an average of five (5) business days of a valid** request.

[BellSouth Version] Subject to the same exclusions that apply to BellSouth's delivery of CSRs, <<customer_short_name>> shall provide to BellSouth access to CSRs within **four (4) hours after** request **via electronic access where available. If electronic access is not available, <<customer_short_name>> shall provide to BellSouth paper copies of customer record information including circuit numbers associated with each telephone number where applicable within forty-eight (48) hours of a valid request.**

Item No. 86, Issue No. 6-3(B) [Section 2.5.6.3]: How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

2.5.6.3 [CLEC Version] Disputes over Alleged Noncompliance. **If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken or will be taken within five (5) calendar days or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting that the non-compliance, the requesting** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

[BellSouth Version] Disputes over Alleged Noncompliance. In it's **written notice to the other Party** the alleging Party will state **that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

Item No. 87, Issue No. 6-4 [Section 2.6]: Should BellSouth be allowed to assess manual service order charges on CLEC orders for which BellSouth does not provide an electronic ordering option?

2.6 [CLEC Version] Service Ordering and Provisioning. BellSouth will provide the capability to place orders electronically and/or manually. <<customer_short_name>> can determine if orders can be placed electronically for a certain product by reviewing the LOH found on BellSouth's web site located at http://interconnection.bellsouth.com/guides/html/leo.html. Electronic ordering will be made available via a single interface for ordering and pre-ordering or the integration of a pre-ordering and ordering interface. <<customer_short_name>> may integrate the EDI interface with the EDI pre-ordering interface or the TAG ordering interface with the TAG pre-ordering interface. In addition, BellSouth will provide integrated pre-ordering and ordering capability through the LENS interface for non-complex and certain complex resale service requests and certain network element requests. Facsimile and e-mail shall not be considered electronic interfaces. If at any time such interfaces are not available to make placement of an electronic local service request (LSR) possible, <<customer_short_name>> shall use the manual LSR process for the ordering of all services and network elements and any combination thereof. Such manual LSRs must be submitted via facsimile except when pre-arranged with BellSouth to mail manual LSRs of over one hundred (100) pages. **In such cases**, <<customer_short_name>> will be assessed the lower electronically submitted OSS rate. BellSouth will make available the CLEC OSS ordering interface for the purpose of exchanging order information, including CLEC Service Order Tracking System (CSOTS) order status and completion notification, for non-complex and certain resale requests, certain network elements and network element combinations.

[BellSouth Version] Service Ordering and Provisioning. BellSouth will provide the capability to place orders electronically and/or manually. <<customer_short_name>> can determine if orders can be placed electronically for a certain product by reviewing the LOH found on BellSouth's web site located at http://interconnection.bellsouth.com/guides/html/leo.html. Electronic ordering will be made available via a single interface for ordering and pre-ordering or the integration of a pre-ordering and ordering interface. <<customer_short_name>> may integrate the EDI interface with the EDI pre-ordering interface or the TAG ordering interface with the TAG pre-ordering interface. In addition, BellSouth will provide integrated pre-ordering and ordering capability through the LENS interface for non-complex and certain complex resale service requests and certain network element requests. Facsimile and e-mail shall not be considered electronic interfaces. If at any time such interfaces are not available to make placement of an electronic local service request (LSR) possible, <<customer_short_name>> shall use the manual LSR process for the ordering of all services and network elements and any combination thereof. Such manual LSRs must be submitted via

facsimile except when pre-arranged with BellSouth to mail manual LSRs of over one hundred (100) pages. **In the case of outages of BellSouth's OSS interfaces,** <<customer_short_name>> will be assessed the lower electronically submitted OSS rate **if <<customer_short_name>> must submit LSRs manually during periods of systems outages by complying with the rules specified in the LOH located at** http://interconnection.bellsouth.com/guides/html/leo.html. BellSouth will make available the CLEC OSS ordering interface for the purpose of exchanging order information, including CLEC Service Order Tracking System (CSOTS) order status and completion notification, for non-complex and certain resale requests, certain network elements and network element combinations.

Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Data Advancement (a/k/a service expedites)?

2.6.5 [PARTIES DISAGREE ON THE RATE, NOT THE LANGUAGE] Service Date Advancement Charges (a.k.a. Expedites). For Service Date Advancement requests by <<customer_short_name>>, Service Date Advancement charges will apply for intervals less than the standard interval as outlined in Section 8 of the LOH, located at http://interconnection.bellsouth.com/guides/html/leo.html. The charges shall be as set-forth in Exhibit A of Attachment 2 of this Agreement and will apply only where Service Date Advancement has been specifically requested by the requesting Party, and the element or service provided by the other Party meets all technical specifications and is provisioned to meet those technical specifications. If <<customer_short_name>> accepts service on the plant test date (PTD) normal recurring charges will apply from that date but Service Date Advancement charges will only apply if <<customer_short_name>> previously requested the order to be expedited and the expedited DD is the same as the original PTD.

Item No. 89, Issue No. 6-6 [Section 2.6.25]: Should CLEC be required to deliver a FOC to BellSouth for purposes of porting a number within a firm interval?

2.6.25 [CLEC Version] **Subject to the same exclusions that apply to BellSouth's delivery of a FOC, <<customer_short_name>> shall use best efforts to return a FOC to BellSouth, for purposes of porting a number, within an average of five (5) business days, for noncomplex orders, after <<customer_short_name>>'s receipt from BellSouth of a valid LSR.**

[BellSouth Version] **<<customer_short_name>> shall return a FOC to BellSouth within thirty-six (36) hours, exclusive of Saturdays, Sundays and Holidays, after <<customer_short_name>>'s receipt from BellSouth of a valid LSR.**

Item No. 90, Issue No. 6-7 [Section 2.6.26]: Should CLEC be required to provide Reject Responses to BellSouth within a firm interval?

2.6.26 [CLEC Version] **Subject to the same exclusions that apply to BellSouth's delivering a Reject Response, <<customer_short_name>>** shall **use best efforts to** provide a Reject Response to BellSouth within **an average of forty-eight (48)** hours, **for noncomplex orders and** exclusive of Saturdays, Sundays and Holidays, after BellSouth's submission of an LSR which is incomplete or incorrectly formatted.

[BellSouth Version] <<customer_short_name>> shall provide a Reject Response to BellSouth within **twenty-four (24)** hours, exclusive of Saturdays, Sundays and Holidays, after BellSouth's submission of an LSR which is incomplete or incorrectly formatted.

Item No. 91, Issue No. 6-8 [Section 2.7.10.4]: Should BellSouth be required to provide performance and maintenance history for circuits with chronic problems?

2.7.10.4 [CLEC Version] **Upon request from <<customer_short_name>>, BellSouth will disclose all available performance and maintenance history regarding the network element, service or facility subject to the Chronic Ticket.**

[BellSouth Version] **No Section.**

Item No. 92, Issue No. 6-9 [Section 2.9.1]: Should charges for substantially similar OSS functions performed by the parties be reciprocal?

2.9.1 [CLEC Version] Rates. **The Parties** shall bill **each other for providing** OSS **functionalities at the** rates set forth in Exhibit A of Attachment 2 of this Agreement. <<customer_short_name>> shall bill BellSouth a single manual OSS charge (SOMAN) per local service request.

[BellSouth Version] Rates. **BellSouth** shall bill **<<customer_short_name>>** OSS rates **pursuant to the terms, conditions and rates for OSS as** set forth in Exhibit A of Attachment 2 of this Agreement. <<customer_short_name>> shall bill BellSouth a single manual OSS charge (SOMAN) per local service request **associated with the 'port back' of a telephone number to BellSouth as set forth in Exhibit A of Attachment 2 of this Agreement, pursuant to the terms and conditions under which BellSouth bills <<customer_short_name>> for OSS, including FOC turnaround times the same as BellSouth's, due date intervals the same as BellSouth's for port out of numbers only and CSRs handled under the same terms and conditions that BellSouth is held to in providing the CSRs to <<customer_short_name>>. Should BellSouth desire to establish a mechanized interface with <<customer_short_name>> in support of the 'port back' local service requests, BellSouth shall initiate a New Business Request to <<customer_short_name>>.**

Item No. 93, Issue No. 6-10 [Section 3.1.1]: (A) Can BellSouth make the porting of an End User to the CLEC contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the End User changing its PIC?

(B) If not, should BellSouth be subject to liquidated damages for imposing such conditions?

3.1.1 [CLEC Version] **In no event shall BellSouth refuse to permit, or otherwise refuse to comply with its obligations hereunder with respect to, the transition to <<customer_short_name>> of any End User by conditioning such permission or compliance upon (a) <<customer_short_name>>'s entry into any billing and/or collection arrangement, operational understanding or relationship with one or more of BellSouth's Affiliates (including, without limitation, BellSouth Long Distance), or any third party carrier; or (b) any applicable End User's or <<customer_short_name>>'s entry into any other agreement, arrangement, understanding or relationship with BellSouth or any of its Affiliates, or a third party carrier other than as expressly contemplated by this Agreement. In the event that BellSouth shall withhold or condition its permission or compliance with respect to any End User-transition matter in violation of the foregoing sentence, <<customer_short_name>> shall automatically and immediately be entitled to assess against and collect from BellSouth, in addition to and without prejudice to or limitation upon any other rights or remedies <<customer_short_name>> and/or any of its End Users may have under this Agreement, under any other agreement, instrument or document related hereto or contemplated hereby or otherwise at law or in equity against BellSouth and/or its Affiliates, or a third party carrier in respect of any such matters and/or any breach or violation of any other provision(s) of this Agreement occurring in connection therewith, an amount equal to $1,000 per occurrence for each day. Each of BellSouth and <<customer_short_name>> acknowledge and agree that, insofar as it would be impossible or commercially impracticable to ascertain and fix the actual amount of damages as would be sustained by <<customer_short_name>> as a result of any breach by BellSouth of the foregoing provisions of this Section 3.1.1, the liquidated damage amount specified in the foregoing sentence is agreed to as a reasonable approximation of the damages likely to be sustained by <<customer_short_name>>, and not as a penalty, upon the occurrence and during the continuance of any such breach.**

[BellSouth Version] **No Section.**

Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: (A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?

(B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

3.1.2 [CLEC Version] Mass Migration of Customers. BellSouth will cooperate with <<customer_short_name>> to accomplish mass migration of customers expeditiously and on terms that are reasonable and non-discriminatory. **Mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) will be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information shall be used. An electronic OSS charge shall be assessed per service arrangement migrated. This Section shall not govern bulk migration from one service arrangement to another for the same carrier or migration of a collocation space from one carrier to another.**

[BellSouth Version] Mass Migration of Customers. BellSouth will cooperate with <<customer_short_name>> to accomplish mass migration of customers expeditiously and on terms that are reasonable and non-discriminatory.

3.1.2.1 [CLEC Version] **BellSouth shall only charge <<customer_short_name>> a TELRIC-based records change charge for the migration of customers for which no physical re-termination of circuits must be performed. The TELRIC-based records change charge is as set forth in Exhibit A of Attachment 2 of this Agreement. Such migrations shall be completed within ten (10) calendar days of an LSR or spreadsheet submission. The TELRIC-based charge for physical re-termination of circuits (including appropriate record changes (a single charge will apply)) is as set forth in Exhibit A of Attachment 2 of this Agreement. Such physical re-terminations shall be completed within ten (10) calendar days of electronic LSR or spreadsheet submission.**

[BellSouth Version] **No Section**.

ATTACHMENT 7

BILLING

Item No. 95, Issue No. 7-1 [Section 1.1.3]: What time limits should apply to backbilling, over-billing, and under-billing issues?

1.1.3 [CLEC Version] The Bill Date, as defined herein, must be present on each bill transmitted by one Party to the other Party and must be a valid calendar date. **Bills should not be rendered for any charges which are incurred under this agreement when more than ninety (90) days have passed since the bill date on which those charges ordinarily would have been billed. Billed amounts for services rendered more than one (1) billing period prior to the Bill Date shall be invalid unless the billing Party identifies such billing as "back-billing" on a line-item basis. However, both Parties recognize that situations exist which would necessitate billing beyond ninety (90) days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued. These exceptions are:**

Charges connected with jointly provided services whereby meet point billing guidelines require either party to rely on records provided by a third party and such records have not been provided in a timely manner;

Charges incorrectly billed due to erroneous information supplied by the non-billing Party.

[BellSouth Version] The Bill Date, as defined herein, must be present on each bill transmitted by one Party to the other Party and must be a valid calendar date. **Charges incurred under this Agreement are subject to applicable Commission rules and state statutes of limitations.**

Item No. 96, Issue No. 7-2 [Section 1.2.2]: (A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?

1.2.2 [CLEC Version] OCN, CC, CIC, ACNA and BAN Changes. **In the event that either Party makes any corporate name change (including addition or deletion of a d/b/a), or a change in OCN, CC, CIC, ACNA or any other LEC identifier (collectively, a "LEC Change"), the changing Party shall submit written notice to the other Party. A Party may make one (1) LEC Change per state in any twelve (12) month period without charge by the other Party for updating its databases, systems, and records solely to reflect such LEC Change. In the event of any other LEC Change, such charge shall be at the cost-based, TELRIC compliant rate set forth in Exhibit A to this Attachment 7. LEC Changes shall be accomplished in thirty (30) calendar days and shall result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order or maintenance interfaces made available by BellSouth pursuant to Attachment 6 of this Agreement. At the request of a Party, the other Party shall process and implement all system and record changes necessary to effectuate a new OCN/CC within thirty (30) calendar days. At the request of a Party, the other Party shall establish a new BAN within ten (10) calendar days.**

[BellSouth Version] OCN, CC, CIC, ACNA and BAN Changes. **If <<customer_short_name>> needs to change its ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s) under which it operates when <<customer_short_name>> has already been conducting business utilizing that ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s), <<customer_short_name>> shall bear all costs incurred by BellSouth to convert <<customer_short_name>> to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s). ACNA/BAN/CC/CIC/OCN conversion charges include the time required to make system updates to all of <<customer_short_name>>'s End User customer records and will be handled by the BFR/NBR process.**

Item No. 97, Issue No. 7-3 [Section 1.4]: When should payment of charges for service be due?

1.4 [CLEC Version] Payment Due. Payment **of charges** for services rendered will be due **thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

[BellSouth Version] Payment Due. Payment for services will be due **on or before the next bill date (Payment Due Date)** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

Item No. 98, Issue No. 7-4 [Section 1.6]: (A) What interest rate should apply for late payments? (B) What fee should be assessed for returned checks?

1.6 [CLEC Version] Late Payment. Subject to the provisions of Section 1.7 below, if any portion of the payment is received by BellSouth after the payment due date as set forth in Section 1.2 above, or if any portion of the payment is received by the billing Party in funds that are not immediately available to the billing Party, then a late payment charge shall be due to the billing Party. The late payment charge shall be in an amount equal to not received by the payment due date multiplied by a late factor and will be applied on a per /bill basis. The late factor shall be **one (1) percent per month**. In addition to any applicable late payment charges, <<customer_short_name>> may be **assessed a $20** fee for all returned checks.

[BellSouth Version] Late Payment. Subject to the provisions of Section 1.7 below, if any portion of the payment is received by BellSouth after the payment due date as set forth in Section 1.2 above, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment charge shall be due to BellSouth. The late payment charge shall be the portion of the payment not received by the payment due date multiplied by a late factor and will be applied on a per bill basis. The late factor shall be **as set forth in Section A2 of the GSST, Section B2 of the Private Line Service Tariff or Section E2 of the Interstate Access Tariff, as appropriate**. In addition to any applicable late payment charges, <customer_short_name>> may be **charged** a fee for all returned checks **as set forth in Section A2 of the GSST or pursuant to the applicable state law.**

Item No. 99, Issue No. 7-5 [Section 1.7.1]: What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?

1.7.1 [CLEC Version] Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. Upon detection of such use, the detecting Party will provide written notice to the other Party that additional applications for **such** service may be refused, that any pending orders for **such** service may not be completed, and/or that access to ordering systems **for such service** may be suspended if such use is not corrected or ceased by the fifteenth (15th) calendar day following the date of the notice. In addition, the detecting Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the detecting Party may terminate the provision of **such** existing services to the other Party if such use is not corrected or ceased by the thirtieth (30th) calendar day following the date of the initial notice. **Notwithstanding the foregoing, if the Party that receives the notice disagrees with the issuing Party's allegations of prohibited, unlawful or improper use, it shall provide written notice to the issuing Party stating the reasons therefor. Upon delivery of such notice of dispute, the foregoing provisions regarding suspension and termination will be stayed, and the Parties shall work in good faith to resolve any dispute over allegations of prohibited, unlawful or improper use. If the Parties are unable to resolve such dispute amicably, the issuing Party shall proceed, if at all, pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.**

[BellSouth Version] Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. Upon detection of such use, the detecting Party will provide written notice to the other Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifteenth (15th) calendar day following the date of the notice. In addition, the detecting Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the detecting Party may terminate the provision of **all** existing services to the other

Party if such use is not corrected or ceased by the thirtieth (30th) calendar day following the date of the initial notice.

Item No. 100, Issue No. 7-6 [Section 1.7.2]: Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

1.7.2 [CLEC Version] **Each Party** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **Due Date, the billing Party may** provide written notice **to the other Party** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **as indicated on the notice in dollars and cents**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **the billing Party** may, at the same time, provide written notice that **the billing Party** may discontinue the provision of existing services to **the other Party** if payment of such amounts, **as indicated on the notice (in dollars and cents),** is not received by the thirtieth (30th) calendar day following the date of the Initial Notice.

[BellSouth Version] **BellSouth** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **bill date in the month after the original bill date, BellSouth** will provide written notice to **<<customer_short_name>>** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **and all other amounts not in dispute that become past due before refusal, incompletion or suspension**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **BellSouth** may, at the same time, provide written notice **to the person designated by <<customer_short_name>> to receive notices of noncompliance** that **BellSouth** may discontinue the provision of existing services to **<<customer_short_name>>** if payment of such amounts**, and all other amounts not in dispute that become past due before discontinuance**, is not received by the thirtieth (30th) calendar day following the date of the initial notice.

Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?

1.8.3 [CLEC Version] The amount of the security shall not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing under this Agreement for existing CLECs (based on average monthly billings for the most recent six (6) month period). Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

[BellSouth Version] The amount of the security shall not exceed two (2) month's **estimated billing for new CLECs or** actual billing for existing CLECs. Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

1.8.3.1 [CLEC Version] **The amount of security due from an existing CLEC shall be reduced by amounts due <<customer_short_name>> by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in Section 1.8.5.1, and subject to the standard set forth in Section 1.8.5.**

[BellSouth Version]. **No Section.**

Item No. 103, Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

1.8.6 [CLEC Version] Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section **and either agreed to by <<customer_short_name>> or as ordered by the Commission** within thirty (30) calendar days **of such agreement or order**, service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

[BellSouth Version].Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section within thirty (30) calendar days **of <<customer_short_name>>'s receipt of such request,** service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

Item No. 104, Issue No. 7-10 [Section 1.8.7]: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?

1.8.7 [CLEC Version] The Parties will work together to determine the need for or amount of a reasonable deposit. **If the Parties are unable to agree, either Party** may file a petition for resolution of the dispute and both parties shall cooperatively seek expedited resolution of such dispute.

[BellSouth Version]. The Parties will work together to determine the need for or amount of a reasonable deposit. **If <<customer_short_name>> does not agree with the amount or need for a deposit requested by BellSouth, <<customer_short_name>>** may file a petition with the Commissions for resolution of the dispute and both Parties shall cooperatively seek expedited resolution of such dispute**. BellSouth shall not terminate service during the pendency of such a proceeding provided that <<customer_short_name>> posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.**

Item No. 105, Issue No. 7-11 [Section 1.8.9]: Under what conditions may BellSouth seek additional security deposit from CLEC?

1.8.9 [CLEC Version] Subject to a standard of commercial reasonableness, if a material change in the circumstances of <<customer_short_name>> so warrants and/or gross monthly billing has increased **more than 25%** beyond the level most recently used to determine the level of security deposit, BellSouth reserves the right to request additional security subject to the criteria set forth herein this Section 1.8. **Notwithstanding the foregoing, BellSouth shall not make such additional requests based solely on increased billing more frequently than once in any six (6) month period.**

[BellSouth Version] Subject to a standard of commercial reasonableness, if a material change in the circumstances of <<customer_short_name>> so warrants and/or gross monthly billing has increased beyond the level most recently used to determine the level of security deposit, BellSouth reserves the right to request additional security subject to the criteria set forth in this Section 1.8.

Item No. 106, Issue No. 7-12 [Section 1.9.1]: To whom should BellSouth be required to send the 15-day notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?

1.9.1 [CLEC Version] **Notices sent pursuant to this Attachment 7** also shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.

[BellSouth Version] BellSouth's **Initial Notice to <<customer_short_name>> that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, and all other amounts not in dispute that become past due before refusal, incompletion or suspension, is not received by the fifteenth (15th) calendar day following the date of the notice is system generated and will only be supplied to <<customer_short_name>>'s billing contact. Notices, not system generated, of security deposits and suspension or termination of services** also shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement. **Such notices must be sent in accordance with the time frames set forth in Section 1.7.**

ATTACHMENT 11

BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)

Item No. 107, Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]: (A) Should BellSouth be permitted to charge CLEC the full development costs associated with a BFR? (B) If so, how should these costs be recovered?

1.5 [CLEC Version] For any new or modified network element, interconnection option or service option not ordered by the FCC or Commission, if the preliminary analysis states that BellSouth will offer the new or modified network element, interconnection option or service option, the preliminary analysis will include an estimate of the **nonrecurring and recurring rates of** the network element, interconnection option or service option and the date the request can be met. If the preliminary analysis states that BellSouth will not offer the new or modified network element, interconnection option or service option, BellSouth will provide an explanation of why the request is not technically feasible, does not qualify as a BFR for the new or modified network element, interconnection option or service option, should actually be submitted as a NBR or is otherwise not required to be provided under the Act. If BellSouth cannot provide the network element, interconnection option or service option by the requested date, BellSouth shall provide an alternative proposed date together with a detailed explanation as to why BellSouth is not able to meet <<customer_short_name>>'s requested date.

[BellSouth Version] For any new or modified network element, interconnection option or service option not ordered by the FCC or Commission, if the preliminary analysis states that BellSouth will offer the new or modified network element, interconnection option or service option, the preliminary analysis will include an estimate of the **costs of utilizing existing resources, both personnel and systems, in the development including, but not limited to, request parameters analysis, determination of impacted BellSouth departments, determination of required resources, project management resources, etc. (Development Rate) including a general breakdown of such costs associated with** the network element, interconnection option or service option and the date the request can be met. If the preliminary analysis states that BellSouth will not offer the new or modified network element, interconnection option or service option, BellSouth will provide an explanation of why the request is not technically feasible, does not qualify as a BFR for the new or modified network element, interconnection option or service option, should actually be submitted as a NBR or is otherwise not required to be provided under the Act. If BellSouth cannot provide the network element, interconnection option or service option by the requested date, BellSouth shall provide an alternative proposed date together with a detailed explanation as to why BellSouth is not able to meet <<customer_short_name>>'s requested date.

1.8.1 [<<customer_short_name>>] Acceptance of the preliminary analysis must be in writing and accompanied by the estimated **nonrecurring rate** for the new or modified network element, interconnection option or service option quoted in the preliminary analysis.

[BellSouth Version] Acceptance of the preliminary analysis must be in writing and accompanied by the estimated **Development Rate** for the new or modified network element, interconnection option or service option quoted in the preliminary analysis.

1.9 [CLEC Version] Notwithstanding any other provision of this Agreement, BellSouth shall propose a firm price quote, including the firm nonrecurring rate and the firm recurring rate, and a detailed implementation plan within ten (10) business days of receipt of <<customer_short_name>>'s accurate BFR application for a network element, interconnection option or service option that is operational at the time of the request; thirty (30) business days of receipt of <<customer_short_name>>'s accurate BFR application for a new or modified network element, interconnection option or service option ordered by the FCC or Commission; and within sixty (60) business days of receipt of <<customer_short_name>>'s accurate BFR application for a new or modified network element, interconnection option or service option not ordered by the FCC or Commission or not operational at the time of the request. Such firm price quote shall not exceed the estimate provided with the preliminary analysis by more than 25%.

[BellSouth Version] Notwithstanding any other provision of this Agreement, BellSouth shall propose a firm price quote, including **the firm Development Rate**, the firm nonrecurring rate and the firm recurring rate, and a detailed implementation plan within ten (10) business days of receipt of <<customer_short_name>>'s accurate BFR application for a network element, interconnection option or service option that is operational at the time of the request; thirty (30) business days of receipt of <<customer_short_name>>'s accurate BFR application for a new or modified network element, interconnection option or service option ordered by the FCC or Commission; and within sixty (60) business days of receipt of <<customer_short_name>>'s accurate BFR application for a new or modified network element, interconnection option or service option not ordered by the FCC or Commission or not operational at the time of the request. The firm nonrecurring rate will not include any of the Development Rate or the complex request evaluation fee, if required, in the calculation of this rate. Such firm price quote shall not exceed the estimate provided with the preliminary analysis by more than 25%.

1.10 [CLEC Version] <<customer_short_name>> shall have thirty (30) business days from receipt of the firm price quote to accept or deny the firm price quote and submit any additional nonrecurring rate quoted in the firm price quote. If the firm price quote is less than the preliminary analysis' estimated nonrecurring rate for the new or modified network element, interconnection option or service option

not ordered by the FCC or Commission, BellSouth will credit <<customer_short_name>>'s account for the difference.

[BellSouth Version] <<customer_short_name>> shall have thirty (30) business days from receipt of the firm price quote to accept or deny the firm price quote and submit any additional **Development** or nonrecurring rates quoted in the firm price quote. If the firm price quote is less than the preliminary analysis' estimated **Development Rate** and/or nonrecurring rate for the new or modified network element, interconnection option or service option not ordered by the FCC or Commission, BellSouth will credit <<customer_short_name>>'s account for the difference.

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2004-42-C

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
NewSouth Communications, Corp.,	)	
NuVox Communications, Inc.,	)	
KMC Telecom V, Inc.,	)	**CERTIFICATE OF SERVICE**
KMC Telecom III LLC, and	)	
Xspedius [Affiliates] of an	)	
Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934,	)	
as Amended	)	

This is to certify that I have caused to be served this day, one (1) copy of the **Testimony of Joint Petitioners** via first-class and electronic mail service addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
1600 Williams Street
Columbia SC 29201

David Butler, Esquire
South Carolina
Public Service Commission
PO Drawer 11649
Columbia, SC 29211

Carol Roof

June 22, 2004
Columbia, South Carolina
F:\APPS\OFFICE\WPWIN\WPDOCS\KMC_NewSouth_Nuvox_Xspedius\cert.service.wpd